

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CITY OF BAINBRIDGE ISLAND,

Plaintiff,

No. 3:19-cv-05958

V.

COMPLAINT

RICHARD S. SACKLER; JONATHAN D. SACKLER; MORTIMER D.A. SACKLER; KATHE A. SACKLER; ILENE SACKLER LEFCOURT; BEVERLY SACKLER; THERESA SACKLER; DAVID A. SACKLER; TRUST FOR THE BENEFIT OF MEMBERS OF THE RAYMOND SACKLER FAMILY; RHODES PHARMACEUTICALS L.P.; RHODES PHARMACEUTICALS INC.; RHODES TECHNOLOGIES; RHODES TECHNOLOGIES INC.; ENDO HEALTH SOLUTIONS INC.; ENDO PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICALS, INC.; JOHNSON & JOHNSON; TEVA PHARMACEUTICALS INDUSTRIES, LTD.; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; ALLERGAN PLC f/k/a ACTAVIS PLC; ALLERGAN FINANCE, LLC f/k/a ACTAVIS, INC. f/k/a WATSON PHARMACEUTICALS, INC.; WATSON LABORATORIES, INC.; ACTAVIS LLC; ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA, INC.; MALLINCKRODT PLC; MALLINCKRODT, LLC; SPECGX LLC; PAR PHARMACEUTICAL COMPANIES, INC.;

JURY DEMAND

**COMPLAINT
(3:19-cv-05958)**

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 PAR PHARMACEUTICAL, INC.; WEST-
2 WARD PHARMACEUTICAL CORP.;
3 HIKMA PHARMACEUTICALS PLC;
4 MYLAN PHARMACEUTICALS, INC.;
5 CARDINAL HEALTH, INC.; MCKESSON
6 CORPORATION; AMERISOURCEBERGEN
7 DRUG CORPORATION; WALMART, INC.;
8 WALGREENS BOOTS ALLIANCE INC. a/k/a
9 WALGREEN CO.; THRIFTY PAYLESS,
10 INC.; ADVANTAGE LOGISTICS; and JOHN
11 AND JANE DOES 1 THROUGH 100,
12 INCLUSIVE,

13 Defendants.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

COMPLAINT
(3:19-cv-05958)

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PARTIES	6
III.	JURISDICTION AND VENUE.....	19
IV.	FACTUAL ALLEGATIONS.....	19
	A. History and Background of Medical Use of Opioids.....	19
	B. The Sackler Family Played a Pivotal Role in Setting the Stage for the Worst Man-Made Epidemic in Modern Medical History	23
	1. The Sackler family pioneered the integration of advertising and medicine.	23
	2. The Sacklers were personally involved in the development and aggressive marketing of OxyContin.	26
	3. Following reports of OxyContin abuse and federal investigations, the Sacklers continued to promote opioids but took steps to shield their assets from judgment.....	30
	4. In response to enforcement actions in the United States, the Sacklers have moved their aggressive opioid marketing— and their wealth—overseas.	34
	C. The Booming Business of Addiction.	37
	1. Other Manufacturing Defendants leapt at the opioid opportunity.....	37
	2. Distributor Defendants knowingly supplied dangerous quantities of opioids while advocating for limited oversight and enforcement.	42
	3. Pill mills and overprescribing doctors also placed their financial interests ahead of their patients' interests.....	45
	4. Widespread prescription opioid use broadened the market for heroin and fentanyl.....	48
	D. The Marketing Defendants Promoted Prescription Opioids Through Several Channels.	51

1.	The Marketing Defendants aggressively deployed sales representatives to push their products.	52
2.	The Marketing Defendants bankrolled seemingly independent “front groups” to promote opioid use and fight restrictions on opioids.....	57
3.	“It was pseudoscience”: the Marketing Defendants paid prominent physicians to promote their products.....	61
4.	The Marketing Defendants used “unbranded” advertising as a platform for their misrepresentations about opioids.....	67
E.	Specific Misrepresentations Made by the Marketing Defendants.....	68
1.	The Marketing Defendants falsely claimed that the risk of opioid abuse and addiction was low.....	68
2.	The Marketing Defendants falsely claimed that opioids were proven effective for chronic pain and would improve quality of life.....	81
3.	The Marketing Defendants falsely claimed doctors and patients could increase opioid usage indefinitely without added risk.....	84
4.	The Marketing Defendants falsely instructed doctors and patients that more opioids were the solution when patients presented symptoms of addiction.....	89
5.	The Marketing Defendants falsely claimed that risk-mitigation strategies, including tapering and abuse-deterring technologies, made it safe to prescribe opioids for chronic use.	92
F.	Research Demonstrates that the Manufacturing Defendants’ Claims are False.....	98
G.	The 2016 CDC Guideline and Other Recent Analyses Confirm That the Marketing Defendants’ Statements About the Risks and Benefits of Opioids Are Patently False.....	99
H.	Bainbridge Island Has Been Directly Affected by the Opioid Epidemic Caused by Defendants.	106
I.	No Federal Agency Action, Including by the FDA, Can Provide the Relief Bainbridge Island Seeks Here.....	107

1	V. CLAIMS FOR RELIEF.....	108
2	COUNT ONE — VIOLATIONS OF THE WASHINGTON CONSUMER	
3	PROTECTION ACT, RCW 19.86, <i>ET SEQ.</i>	108
4	COUNT TWO — PUBLIC NUISANCE	110
5	COUNT THREE — NEGLIGENCE	113
6	COUNT FOUR — GROSS NEGLIGENCE	114
7	COUNT FIVE — UNJUST ENRICHMENT	115
8	COUNT SIX — VIOLATIONS OF THE RACKETEER INFLUENCED	
9	AND CORRUPT ORGANIZATIONS ACT (“RICO”), 18 U.S.C.	
10	§ 1961, <i>ET SEQ.</i>	116
11	A. Description of the Defendants’ Enterprises.....	116
12	B. The Enterprises Sought to Fraudulently Increase Defendants’	
13	Profits and Revenues.....	119
14	C. Predicate Acts: Mail and Wire Fraud.....	123
15	D. Bainbridge Island Has Been Damaged by Defendants’ RICO	
16	Violations	131
17	PRAYER FOR RELIEF.....	132
18	JURY TRIAL DEMAND.....	133
19		
20		
21		
22		
23		
24		
25		
26		
27		

I. INTRODUCTION

1. The United States is experiencing the worst human-made epidemic in modern medical history—the misuse, abuse, and over-prescription of opioids.

2. Since 2000, more than 400,000 Americans have lost their lives to an opioid overdose, more than five times as many American lives as were lost in the entire Vietnam War. On any given day, 134 people will die from opioid overdoses in the United States. Drug overdoses are now the leading cause of death for Americans under age fifty. The recent increases in drug overdose deaths have been so steep that they have contributed to reductions in the country's life expectancy over the last three years, a pattern unprecedented since World War II.

3. The opioid crisis has become a public health emergency. Plaintiff City of Bainbridge Island, with close to 25,000 residents, has been deeply affected by the crisis. The opioid abuse prevalent throughout the City has affected Plaintiff in numerous ways, through increased drug-related offenses affecting law enforcement and the municipal court, as well as through additional resources spent on community and social programs, including for the next generation of Bainbridge Island residents, who are growing up in the shadow of the opioid epidemic.

4. While the City has committed considerable resources to deal with the crisis, fully addressing the crisis requires that those responsible for it pay for their conduct and to abate the nuisance and harms they have created in Bainbridge Island.

5. The opioid epidemic is no accident. On the contrary, it is the foreseeable consequence of Defendants' reckless and misleading promotion of potent narcotics as safe and effective treatment for pain and their relentless distribution of hundreds of millions of pills into American communities when they knew or should have known those pills were being diverted to illicit use.

6. Purdue Pharma, L.P., Purdue Pharma, Inc. and The Purdue Frederick Company, Inc. (hereafter “Purdue) set the stage for the opioid epidemic, through the production and promotion of its blockbuster drug, OxyContin. Purdue sought Chapter 11 bankruptcy protection

1 on September 15, 2019, and thus is not named as a defendant here. Purdue introduced a drug
 2 with a narcotic payload many times higher than that of previous prescription painkillers, while
 3 executing a sophisticated, multi-pronged marketing campaign to change prescribers' perception
 4 of the risk of opioid addiction and to portray opioids as effective treatment for chronic pain.
 5 Purdue pushed its message of opioids as a low-risk panacea on doctors and the public through
 6 every available avenue, including through direct marketing, front groups, key opinion leaders,
 7 unbranded advertising, and hundreds of sales representatives who visited doctors and clinics on a
 8 regular basis.

9 7. As sales of OxyContin and Purdue's profits surged, Defendants Endo, Janssen,
 10 Teva, Actavis, and Mallinckrodt—as explained in further detail below—added additional
 11 prescription opioids, aggressive sales tactics, and dubious marketing claims of their own to the
 12 deepening crisis. They paid hundreds of millions of dollars to market and promote the drugs,
 13 notwithstanding their dangers, and pushed bought-and-paid-for “science” supporting the safety
 14 and efficacy of opioids that lacked any basis in fact or reality. Obscured from the marketing was
 15 the fact that prescription opioids are not much different than heroin—indeed on a molecular
 16 level, they are virtually indistinguishable.

17 8. The opioid epidemic simply could not have become the crisis it is today without
 18 an enormous supply of pills. After the aggressive and misleading marketing of branded opioids
 19 like OxyContin and Opana ignited the epidemic, generic opioids fanned the flames. Defendants
 20 Mallinckrodt, Actavis, Teva, Endo, and Rhodes manufactured and shipped enormous volumes of
 21 generic opioids to communities across the United States, including Plaintiff's. Defendants
 22 McKesson, Cardinal Health, and AmerisourceBergen raked in huge profits from the distribution
 23 of branded and generic opioids alike. These companies knew precisely the quantities of potent
 24 narcotics they were delivering to communities across the country, including Bainbridge Island.
 25 Yet not only did these Defendants intentionally disregard their monitoring and reporting
 26 obligations under federal law, they also actively sought to evade restrictions and obtain higher
 27 quotas to enable the distribution of even larger shipments of opioids.

1 9. Defendants' efforts were remarkably successful: since the mid-1990s, opioids
 2 have become the most prescribed class of drugs in America. Between 1991 and 2011, opioid
 3 prescriptions in the U.S. tripled from 76 million to 219 million per year.¹ In 2013, health care
 4 providers wrote more than 249 million prescriptions for opioid pain medication, enough for
 5 every adult in the United States to have more than one bottle of pills.² In terms of annual sales,
 6 the increase has been ten-fold; before the FDA approved OxyContin in 1995, annual opioid sales
 7 hovered around \$1 billion. By 2015, they increased to almost \$10 billion. By 2020, revenues are
 8 projected to grow to \$18 billion.³

9 10. But Defendants' profits have come at a steep price. Opioids are now the leading
 10 cause of accidental death in the U.S., surpassing deaths caused by car accidents. Opioid overdose
 11 deaths (which include prescription opioids as well as heroin) have risen steeply over the past two
 12 decades, from approximately 8,048 in 1999, to 20,422 in 2009, to over 33,091 in 2015. The
 13 epidemic of overdose deaths shows no sign of slowing: instead, the grim toll climbed to 42,249
 14 in 2016, and to 49,068 in 2017.⁴ As shown in the graph below, the surge in opioid-related deaths
 15 in the past few years is tied to synthetic opioids such as fentanyl, which is many times more
 16 powerful than other opioids but often illicitly manufactured to look like generic oxycodone. Fatal
 17 overdoses involving heroin have also increased significantly since 2011. Nearly half of all opioid
 18 overdose deaths involve a prescription opioid like those manufactured by Defendants,⁵ and, as
 19 discussed further below, the increase in overdoses from non-prescription opioids such as heroin
 20

21 ¹ Nora D. Volkow, MD, *America's Addiction to Opioids: Heroin and Prescription Drug Abuse*, Appearing before
 22 the Senate Caucus on International Narcotics Control, NIH Nat'l Inst. on Drug Abuse (May 14, 2014),
<https://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2014/americas-addiction-to-opioids-heroin-prescription-drug-abuse>.

23 ² *CDC Guideline for Prescribing Opioids for Chronic Pain*, Ctrs. for Disease Control and Prevention,
https://www.cdc.gov/drugoverdose/pdf/guidelines_at-a-glance-a.pdf (last visited Aug. 30, 2019).

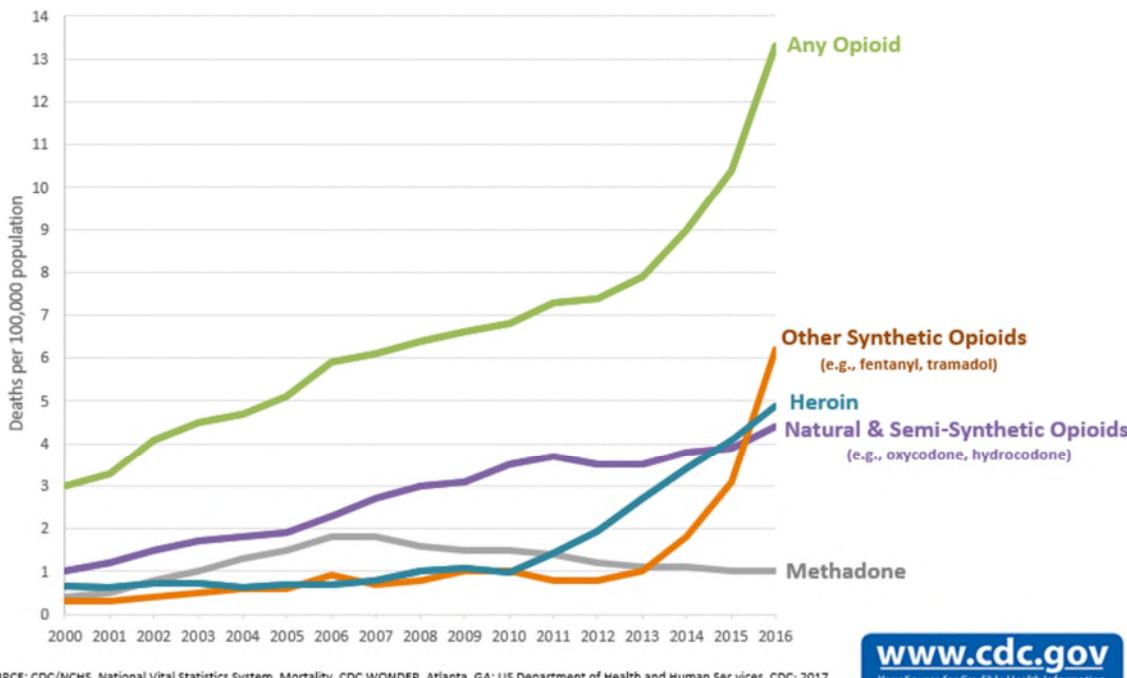
24 ³ *Report: Opioid pain sales to hit \$18.4B in the U.S. by 2020*, CenterWatch (July 17, 2017),
<https://www.centerwatch.com/news-online/2017/07/17/report-opioid-pain-sales-hit-18-4b-u-s-2020/>.

25 ⁴ *Overdose Death Rates*, NIH Nat'l Inst. on Drug Abuse, <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates> (revised Jan. 2019); *Drug Overdose Death Data*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/drugoverdose/data/statedeaths.html> (last reviewed June 27, 2019).

26 ⁵ *Understanding the Epidemic*, Ctrs. for Disease Control and Prevention,
<https://www.cdc.gov/drugoverdose/epidemic/index.html> (last reviewed Dec. 19, 2018).

1 and illicitly manufactured fentanyl is directly attributable to Defendants' success in expanding
 2 the market for opioids of any kind.

Overdose Deaths Involving Opioids, by Type of Opioid, United States, 2000-2016



SOURCE: CDC/NCHS, National Vital Statistics System, Mortality. CDC WONDER, Atlanta, GA: US Department of Health and Human Services, CDC; 2017.
<https://wonder.cdc.gov/>.

www.cdc.gov

Your Source for Credible Health Information

11. To put these numbers in perspective: in 1970, when a heroin epidemic swept the
 12 U.S., there were fewer than 3,000 heroin overdose deaths. And in 1988, around the height of the
 13 crack epidemic, there were fewer than 5,000 crack overdose deaths recorded. In 2005, at its peak,
 14 methamphetamine was involved in approximately 4,500 deaths.

15. Beyond the human cost, the CDC has estimated that the total economic burden of
 16 prescription opioid abuse costs the United States \$78.5 billion per year, which includes increased
 17 costs for health care and addiction treatment, increased strains on human services and criminal
 18 justice systems, and substantial losses in workforce productivity.⁶

19. But even these estimates are conservative. The Council of Economic Advisers—
 20 the primary advisor to the Executive Office of the President—recently issued a report estimating
 21

22

 23 ⁶ *CDC Foundation's New Business Pulse Focuses on Opioid Overdose Epidemic*, Ctrs. for Disease Control and
 24 Prevention (Mar. 15, 2017), <https://www.cdc.gov/media/releases/2017/a0315-Business-Pulse-opioids.html>.

1 that as of 2015, the economic cost of the opioid crisis was \$504 billion—over six times larger
 2 than the most comprehensive study that preceded it.⁷ Whatever the final tally, there is no doubt
 3 that this crisis has had a profound economic impact.

4 14. Defendants orchestrated this crisis. Despite knowing about the true hazards of
 5 their products, Defendants misleadingly advertised their opioids as safe and effective for treating
 6 chronic pain and pushed hundreds of millions of pills into the marketplace for consumption.
 7 Through their sophisticated and well-orchestrated campaign, Defendants touted the purported
 8 benefits of opioids to treat pain and downplayed the risks of addiction. Moreover, even as the
 9 deadly toll of prescription opioid use became apparent to Defendants in years following
 10 OxyContin’s launch, Defendants persisted in aggressively selling and distributing prescription
 11 opioids while evading their monitoring and reporting obligations, so that excessive quantities of
 12 addictive opioids continued to pour into Bainbridge Island and other communities around the
 13 United States.

14 15. Defendants consistently, deliberately, and recklessly made and continue to make
 15 false and misleading statements regarding, among other things, the low risk of addiction to
 16 opioids, opioids’ effectiveness for chronic pain and ability to improve patients’ quality of life
 17 with long-term use, the lack of risk associated with higher dosages of opioids, the need to
 18 prescribe more opioids to treat withdrawal symptoms, and that risk-mitigation strategies and
 19 abuse-deterrent technologies allow doctors to safely prescribe opioids. In addition, Defendants
 20 made and continued to make misleading representations about their compliance with their
 21 obligations to maintain effective controls against diversion and to report suspicious orders in
 22 connection with the sale of opioids.

23
 24
 25 7 *The Underestimated Cost of the Opioid Crisis*, The Council of Econ. Advisers (Nov. 2017),
<https://static.politico.com/1d/33/4822776641cfbac67f9bc7dbd9c8/the-underestimated-cost-of-the-opioid-crisis-embargoed.pdf>; Curtis Florence, Feijun Luo, Chao Zhou, & Likang Xu, *The Economic Burden of Prescription Opioid Overdose, Abuse and Dependence in the United States, 2013*, 54 Med. Care 901 (Oct. 2016),
https://www.researchgate.net/publication/308339245_The_Economic_Burden_of_Prescription_Opioid_Overdose_Abuse_and_Dependence_in_the_United_States_2013.

16. Because of Defendants' misconduct, Bainbridge Island is experiencing substantial public health and other impacts and has suffered significant economic damages, including but not limited to increased costs related to opioid-related crimes and emergencies, criminal justice, and public safety. Bainbridge Island has incurred substantial costs in responding to the crisis and will continue to do so in the future.

17. Accordingly, Bainbridge Island brings this action to hold Defendants liable for their misrepresentations regarding the benefits and risks of prescription opioids, as well as for their failure to monitor, detect, investigate, and report suspicious orders of those products. This conduct (i) violates the Washington Consumer Protection Act, RCW 19.86 *et seq.*, (ii) constitutes a public nuisance under Washington law, (iii) constitutes negligence under Washington law, (iv) has unjustly enriched Defendants, and (v) violates the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.*

II. PARTIES

Bainbridge Island

18. Plaintiff City of Bainbridge Island is located in Kitsap County, Washington. Bainbridge Island is incorporated as an Optional Code City organized under the Manager-Council form of government pursuant to RCW Chapter 35A.13 *et seq.*

Sackler Family Defendants

19. Defendant Richard S. Sackler has resided in Travis County, Texas, since 2013. He became member of Purdue's board of directors in the early 1990s. In 1999, he became Purdue's president.

20. Defendant Jonathan D. Sackler resides in Fairfield County, Connecticut. He became member of Purdue's board of directors in the early 1990s.

21. Defendant Mortimer D.A. Sackler resides in New York County, New York. He became member of Purdue's board of directors in the 1990s.

22. Defendant Kathe A. Sackler resides in Fairfield County, Connecticut. She became a member of Purdue's board of directors in the early 1990s.

1 23. Defendant Ilene Sackler Lefcourt resides in New York County, New York. She
2 became a member of Purdue's board of directors in the early 1990s.

3 24. Defendant Beverly Sackler resides in Fairfield County, Connecticut. She became
4 a member of Purdue's board of directors in the 1990s.

5 25. Defendant Theresa Sackler resides in New York County, New York. She became
6 a member of Purdue's board of directors in the 1990s.

7 26. Defendant David A. Sackler resides in New York County, New York. He became
8 a member of Purdue's board of directors in 2012.

9 27. Defendant Trust for the Benefit of Members of the Raymond Sackler Family (the
10 "Sackler Trust") is a trust for which Defendants Beverly Sackler, Jonathan D. Sackler, and/or
11 Richard S. Sackler are trustees. The Sackler Trust is the 50% direct or indirect beneficial owner
12 of Purdue and Purdue-related entities and the recipient of 50% of profits from the sale of opioids
13 by Purdue and Purdue-related entities.

14 28. Collectively, Richard S. Sackler, Jonathan D. Sackler, Mortimer D.A. Sackler,
15 Kathe A. Sackler, Ilene Sackler Lefcourt, Beverly Sackler, Theresa Sackler, David A. Sackler,
16 and the Sackler Trust are referred to as the "Sackler Family Defendants."

17 Rhodes

18 29. Defendant Rhodes Pharmaceuticals L.P. is a Delaware limited partnership formed
19 November 9, 2007, with its principal place of business in Coventry, Rhode Island. At all relevant
20 times, Rhodes Pharmaceuticals L.P. has marketed generic prescription opioids, including a
21 generic form of OxyContin, which is manufactured by Purdue Pharmaceuticals L.P.

22 30. Defendant Rhodes Pharmaceuticals Inc. is a New York corporation formed on
23 November 9, 2007. Rhodes Pharmaceuticals Inc. is a general partner of Rhodes Pharmaceuticals
24 L.P. Rhodes Pharmaceuticals Inc. is a general partner of Rhodes Pharmaceuticals L.P. At all
25 relevant times, Rhodes Pharmaceuticals Inc. has marketed generic prescription opioids, including
26 a generic form of OxyContin, which is manufactured by Purdue Pharmaceuticals L.P.

1 31. Defendant Rhodes Technologies is a Delaware general partnership formed on
2 April 12, 2005, with its principal place of business in Coventry, Rhode Island. At all relevant
3 times, Rhodes Technologies or its predecessor has manufactured and supplied Purdue with
4 oxycodone, the active pharmaceutical ingredient in OxyContin, for use in the manufacture of
5 pharmaceutical preparations.

6 32. Defendant Rhodes Technologies Inc. is a Delaware corporation formed January
7 28, 1999, with its principal place of business in Coventry, Rhode Island. Rhodes Technologies
8 Inc. is a general partner of Rhodes Technologies. At all relevant times, Rhodes Technologies Inc.
9 has manufactured and supplied Purdue with oxycodone, the active pharmaceutical ingredient in
10 OxyContin, for use in the manufacture of pharmaceutical preparations or has managed Rhodes
11 Technologies or its predecessor in doing so.

12 33. Rhodes Pharmaceuticals L.P., Rhodes Pharmaceuticals Inc., Rhodes
13 Technologies, and Rhodes Technologies Inc. are collectively referred to as "Rhodes."

14 **Endo**

15 34. Defendant Endo Pharmaceuticals, Inc. is a wholly owned subsidiary of Defendant
16 Endo Health Solutions Inc. Both are Delaware corporations with their principal place of business
17 in Malvern, Pennsylvania. Collectively, these entities are referred to as "Endo."

18 35. Each Endo entity acted in concert with one another and acted as agents and/or
19 principals of one another in connection with the conduct described herein.

20 36. Endo manufactures, promotes, sells, markets, and distributes opioids such as
21 Percocet, Opana, and Opana ER.

22 37. Endo generates substantial sales from its opioids. For example, opioids accounted
23 for more than \$400 million of Endo's overall revenues of \$3 billion in 2012, and Opana ER
24 generated more than \$1 billion in revenue for Endo in 2010 and 2013.

25 **Janssen and Johnson & Johnson**

26 38. Defendant Janssen Pharmaceuticals, Inc. is a Pennsylvania corporation with its
27 principal place of business in Titusville, New Jersey, and is a wholly owned subsidiary of

1 Defendant Johnson & Johnson, a New Jersey corporation with its principal place of business in
2 New Brunswick, New Jersey. Collectively, these entities are referred to as "Janssen."

3 39. Both entities above acted in concert with one another and acted as agents and/or
4 principals of one another in connection with the conduct described herein.

5 40. Johnson & Johnson is the only company that owns more than 10% of Janssen
6 Pharmaceuticals, Inc., and corresponds with the FDA regarding the drugs manufactured by
7 Janssen Pharmaceuticals, Inc. Johnson & Johnson also paid prescribers to speak about opioids
8 manufactured by Janssen Pharmaceuticals, Inc. In short, Johnson & Johnson controls the sale and
9 development of the drugs manufactured by Janssen Pharmaceuticals, Inc.

10 41. Janssen manufactures, promotes, sells, markets, and distributes opioids such as
11 Duragesic, Nucynta, and Nucynta ER. Janssen stopped manufacturing Nucynta and Nucynta ER
12 in 2015.

13 42. Janssen generates substantial sales revenue from its opioids. For example,
14 Duragesic accounted for more than \$1 billion in sales in 2009, and Nucynta and Nucynta ER
15 accounted for \$172 million in sales in 2014.

16 **Cephalon and Teva**

17 43. Defendant Cephalon, Inc. ("Cephalon") is a Delaware corporation with its
18 principal place of business in Frazer, Pennsylvania. Defendant Teva Pharmaceutical Industries,
19 Ltd. ("Teva Ltd.") is an Israeli corporation with its principal place of business in Petah Tikva,
20 Israel. In 2011, Teva Ltd. acquired Cephalon. Defendant Teva Pharmaceuticals USA, Inc. ("Teva
21 USA") is a Delaware corporation and a wholly owned subsidiary of Teva Ltd. in Pennsylvania.
22 Teva USA acquired Cephalon in October 2011.

23 44. Cephalon manufactures, promotes, sells, and distributes opioids, including Actiq
24 and Fentora, in the United States.

25 45. Teva Ltd., Teva USA, and Cephalon work together closely to market and sell
26 Cephalon products in the United States. Teva Ltd. conducts all sales and marketing activities for
27 Cephalon in the United States through Teva USA and has done so since its October 2011

1 acquisition of Cephalon. Teva Ltd. and Teva USA hold out Actiq and Fentora as Teva products
 2 to the public. Teva USA sells all former Cephalon-branded products through its “specialty
 3 medicines” division. The FDA-approved prescribing information and medication guide, which
 4 are distributed with Cephalon opioids, disclose that the guide was submitted by Teva USA, and
 5 directs physicians to contact Teva USA to report adverse events.

6 46. All of Cephalon’s promotional websites, including those for Actiq and Fentora,
 7 display Teva Ltd.’s logo.⁸ Teva Ltd.’s financial reports list Cephalon’s and Teva USA’s sales as
 8 its own, and its year-end report for 2012—the year following the Cephalon acquisition in
 9 October 2011—attributed a 22% increase in its specialty medicine sales to “the inclusion of a
 10 full year of Cephalon’s specialty sales,” including sales of Fentora.⁹ Through interrelated
 11 operations like these, Teva Ltd. operates in the United States through its subsidiaries Cephalon
 12 and Teva USA. The United States is the largest of Teva Ltd.’s global markets, representing 53%
 13 of its global revenue in 2015, and, were it not for the existence of Teva USA and Cephalon, Teva
 14 Ltd. would conduct those companies’ business in the United States itself.

15 47. Upon information and belief, Teva Ltd. directs the business practices of Cephalon
 16 and Teva USA, and their profits inure to the benefit of Teva Ltd. as controlling shareholder.
 17 Collectively, these entities are referred to as “Teva.”

18 **Allergan, Actavis, and Watson**

19 48. Defendant Allergan plc is a public limited company incorporated in Ireland with
 20 its principal place of business in Dublin, Ireland. Actavis plc acquired Allergan, Inc. in March
 21 2015, and the combined company changed its name to Allergan plc in June 2015. Actavis plc
 22 (formerly known as Actavis Limited) was incorporated in Ireland in May 2013 for the merger
 23 between Actavis, Inc. and Warner Chilcott plc.

24 49. Defendant Watson Pharmaceuticals, Inc. acquired Actavis Group in October 2012
 25 and changed its name to Actavis, Inc. as of January 2013.

26 ⁸ Actiq, <http://www.actiq.com/> (last visited Aug. 30, 2019).

27 ⁹ *Teva Pharm. Indus. Ltd.* Form 20-F, U.S. Sec. and Exchange Commission (Feb. 12, 2013),
http://annualreports.com/HostedData/AnnualReportArchive/t/NASDAQ_TEVA_2012.pdf.

1 50. Defendant Allergan Finance, LLC (formerly known as Actavis, Inc.) is based in
2 Parsippany, New Jersey. It operates as a subsidiary of Allergan plc.

3 51. Defendant Watson Laboratories, Inc. is a Nevada corporation with its principal
4 place of business in Corona, California, and is a wholly owned subsidiary of Allergan plc (f/k/a
5 Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.).

6 52. Defendant Actavis Pharma, Inc. is registered to do business in the State of
7 Washington as a Delaware corporation with its principal place of business in New Jersey and
8 was formerly known as Watson Pharma, Inc.

9 53. Defendant Actavis LLC is a Delaware limited liability company with its principal
10 place of business in Parsippany, New Jersey.

11 54. Each of these defendants and entities is owned by Defendant Allergan plc, which
12 uses them to market and sell its drugs in the United States. Upon information and belief,
13 Defendant Allergan plc exercises control over these marketing and sales efforts and profits from
14 the sale of Allergan/Actavis/Watson products ultimately inure to its benefit. Collectively, these
15 defendants and entities are referred to as "Actavis."

16 55. Actavis manufactures, promotes, sells, and distributes opioids in the United
17 States, including the branded drugs Kadian and Norco and generic versions of Kadian,
18 Duragesic, and Opana. Actavis acquired the rights to Kadian from King Pharmaceuticals, Inc. on
19 December 30, 2008, and began marketing Kadian in 2009.

20 **Mallinckrodt**

21 56. Defendant Mallinckrodt plc is an Irish public limited company headquartered in
22 Staines-upon-Thames, United Kingdom, with its U.S. headquarters in St. Louis, Missouri.
23 Mallinckrodt plc was incorporated in January 2013 for the purpose of holding the
24 pharmaceuticals business of Covidien plc, which was fully transferred to Mallinckrodt in June of
25 that year. Mallinckrodt began as a U.S.-based company, with the founding of Mallinckrodt &
26 Co. in 1867; Tyco International Ltd. acquired the company in 2000. In 2008, Tyco Healthcare
27 Group separated from Tyco International and renamed itself Covidien.

1 57. Defendant Mallinckrodt, LLC is a limited liability company organized and
2 existing under the laws of the State of Delaware. Mallinckrodt, LLC is a wholly owned
3 subsidiary of Mallinckrodt plc.

4 58. Formed in 2017, Defendant SpecGX LLC is a Delaware limited liability company
5 with its principal place of business in St. Louis, Missouri, and is a wholly owned subsidiary of
6 Defendant Mallinckrodt plc. SpecGX LLC manufactures Mallinckrodt's generic products and
7 bulk active pharmaceutical ingredients (APIs).

8 59. Mallinckrodt plc, Mallinckrodt, LLC, and SpecGX LLC are referred to
9 collectively as "Mallinckrodt."

10 60. Mallinckrodt manufactures, markets, and sells drugs in the United States. As of
11 2012, it was the largest U.S. supplier of opioid pain medications. In particular, it is one of the
12 largest manufacturers of oxycodone in the U.S.

13 61. Mallinckrodt currently manufactures and markets two branded opioids: Exalgo,
14 which is extended-release hydromorphone, sold in 8, 12, 16, and 32 mg dosage strengths, and
15 Roxicodone, which is oxycodone, sold in 15 and 30 mg dosage strengths. In addition,
16 Mallinckrodt previously developed, promoted, and sold the following branded opioid products:
17 Magnacet, TussiCaps, and Xartemis XR.

18 62. While it has sought to develop its branded opioid products, Mallinckrodt has long
19 been a leading manufacturer of generic opioids. Mallinckrodt estimated that in 2015 it received
20 approximately 25% of the U.S. Drug Enforcement Administration's ("DEA") entire annual quota
21 for controlled substances that it manufactures. Mallinckrodt also estimated, based on IMS Health
22 data for the same period, that its generics claimed an approximately 23% market share of DEA
23 Schedules II and III opioid and oral solid dose medications.

24 63. Mallinckrodt operates a vertically integrated business in the United States: (1)
25 importing raw opioid materials; (2) manufacturing generic opioid products, primarily at its
26 facility in Hobart, New York; and (3) marketing and selling its products to drug distributors,

1 specialty pharmaceutical distributors, retail pharmacy chains, pharmaceutical benefit managers
 2 that have mail-order pharmacies, and hospital buying groups.

3 64. In 2017, Mallinckrodt agreed to settle for \$35 million the Department of Justice's
 4 allegations regarding excessive sales of oxycodone in Florida. The Department of Justice alleged
 5 that even though Mallinckrodt knew that its oxycodone was being diverted to illicit use, it
 6 nonetheless continued to incentivize and supply these suspicious sales, and it failed to notify the
 7 DEA of the suspicious orders in violation of its obligations as a registrant under the Controlled
 8 Substances Act, 21 U.S.C. § 801 *et seq.* ("CSA").

9 **Par Pharmaceutical**

10 65. Defendant Par Pharmaceutical, Inc. is a New York corporation with its principal
 11 place of business located in Chestnut Ridge, New York. Par Pharmaceutical, Inc. is a wholly-
 12 owned subsidiary of Defendant Par Pharmaceutical Companies, Inc. and holds itself out as "an
 13 Endo International Company."

14 66. Defendant Par Pharmaceutical Companies, Inc. is a Delaware corporation with its
 15 principal place of business in Chestnut Ridge, New York.

16 67. Par Pharmaceutical, Inc. and Par Pharmaceutical Companies, Inc. are referred to
 17 collectively as "Par Pharmaceutical." Par Pharmaceutical is an affiliate of Defendants Endo
 18 Health Solutions Inc. and Endo Pharmaceuticals, Inc.

19 68. At all relevant times, Par Pharmaceutical has packaged, distributed, supplied,
 20 sold, placed into the stream of commerce, labeled, described, marketed, advertised, promoted
 21 and purported to warn or purported to inform prescribers and users regarding the benefits and
 22 risks associated with the use of the prescription opioid drugs. Further, Par Pharmaceutical
 23 manufactured and sold prescription opioids without fulfilling its legal duty to prevent diversion
 24 and report suspicious orders.

25 69. Based on the private ARCos data made available to Plaintiff, drugs sold and
 26 manufactured by Par Pharmaceutical represent a substantial market share in Plaintiff's
 27 jurisdiction during the relevant time period.

1 70. Par Pharmaceutical's conduct thus directly caused the worst man-made epidemic
2 in modern medical history—the misuse, abuse, and over-prescription of opioids across this
3 country, including in this jurisdiction.

4 **Mylan Pharmaceuticals, Inc.**

5 71. Defendant Mylan Pharmaceuticals, Inc. ("Mylan"), is a West Virginia corporation
6 with its principal place of business in Canonsburg, Pennsylvania.

7 72. At all relevant times, Mylan has packaged, distributed, supplied, sold, placed into
8 the stream of commerce, labeled, described, marketed, advertised, promoted and purported to
9 warn or purported to inform prescribers and users regarding the benefits and risks associated
10 with the use of the prescription opioid drugs. Further, Mylan manufactured and sold prescription
11 opioids without fulfilling its legal duty to prevent diversion and report suspicious orders.

12 73. Based on the private ARCO data made available to Plaintiff, drugs sold and
13 manufactured by Mylan represent a substantial market share in Plaintiff's jurisdiction during the
14 relevant time period.

15 74. Mylan's conduct thus directly caused the worst man-made epidemic in modern
16 medical history—the misuse, abuse, and over-prescription of opioids across this country,
17 including in this jurisdiction.

18 **West-Ward Pharmaceuticals Corp.**

19 75. Defendant West-Ward Pharmaceuticals Corp. is a Delaware corporation with its
20 principal place of business located in Eatontown, New Jersey. West-Ward Pharmaceuticals Corp.
21 is the United States agent and subsidiary of Defendant Hikma Pharmaceuticals PLC, a London-
22 based global pharmaceutical company.

23 76. West-Ward Pharmaceuticals Corp. and Hikma Pharmaceuticals PLC are
24 collectively referred to as "West-Ward."

25 77. At all relevant times, West-Ward has packaged, distributed, supplied, sold, placed
26 into the stream of commerce, labeled, described, marketed, advertised, promoted and purported
27 to warn or purported to inform prescribers and users regarding the benefits and risks associated

1 with the use of the prescription opioid drugs. Further, West-Ward manufactured and sold
2 prescription opioids without fulfilling its legal duty to prevent diversion and report suspicious
3 orders.

4 78. Based on the private ARCos data made available to Plaintiff, drugs sold and
5 manufactured by West-Ward represent a substantial market share in Plaintiff's jurisdiction
6 during the relevant time period.

7 79. West-Ward's conduct thus directly caused the worst man-made epidemic in
8 modern medical history—the misuse, abuse, and over-prescription of opioids across this country,
9 including in this jurisdiction.

10 80. Defendants Sackler Family Defendants, Endo, Janssen, Teva, Actavis, and
11 Mallinckrodt are collectively referred to as the "Marketing Defendants." These Marketing
12 Defendants together with Rhodes, Par Pharmaceutical, Mylan, and West-Ward are collectively
13 referred to as the "Manufacturing Defendants."

14 **AmerisourceBergen**

15 81. Defendant AmerisourceBergen Drug Corporation ("AmerisourceBergen") is a
16 Delaware corporation with its principal place of business located in Chesterbrook, Pennsylvania.

17 82. According to its 2016 Annual Report, AmerisourceBergen is "one of the largest
18 global pharmaceutical sourcing and distribution services companies" with "over \$145 billion in
19 annual revenue."

20 83. AmerisourceBergen is licensed as a "wholesale distributor" to sell prescription
21 and non-prescription drugs, including opioids, in Washington.

22 **Cardinal Health**

23 84. Defendant Cardinal Health, Inc. ("Cardinal Health") is an Ohio Corporation with
24 its principal place of business in Dublin, Ohio.

25 85. According to its 2017 Annual Report, Cardinal Health is "a global, integrated
26 healthcare services and products company serving hospitals, healthcare systems, pharmacies,
27 ambulatory surgery centers, clinical laboratories and physician offices worldwide . . .

1 deliver[ing] medical products and pharmaceuticals.” In 2017 alone, Cardinal Health generated
2 revenues of nearly \$130 billion.

3 86. Cardinal Health is licensed as a “wholesale distributor” to sell prescription and
4 non-prescription drugs, including opioids, in Washington.

5 **McKesson**

6 87. Defendant McKesson Corporation (“McKesson”) is a Delaware Corporation with
7 its principal place of business in San Francisco, California.

8 88. McKesson is the largest pharmaceutical distributor in North America, delivering
9 nearly one-third of all pharmaceuticals used in this region.

10 89. According to its 2017 Annual Report, McKesson “partner[s] with pharmaceutical
11 manufacturers, providers, pharmacies, governments and other organizations in healthcare to help
12 provide the right medicines, medical products and healthcare services to the right patients at the
13 right time, safely and cost-effectively.” Additionally, McKesson’s pharmaceutical distribution
14 business operates and serves thousands of customer locations through a network of twenty-seven
15 distribution centers, as well as a primary redistribution center, two strategic redistribution centers
16 and two repackaging facilities, serving all fifty states and Puerto Rico.

17 90. For the fiscal year ending March 31, 2017, McKesson generated revenues of
18 \$198.5 billion.

19 91. McKesson is licensed as a “wholesale distributor” to sell prescription and non-
20 prescription drugs, including opioids, in Washington.

21 92. Collectively, McKesson, AmerisourceBergen, and Cardinal Health account for
22 approximately 85% of all drug shipments in the United States.

23 **Walgreens**

24 93. Defendant Walgreens Boots Alliance Inc. a/k/a Walgreen Co. (“Walgreens”) is a
25 Delaware corporation with its principal place of business in Illinois. Walgreens, through its
26 various DEA registrant subsidiaries and affiliated entities, conducts business as a licensed
27

1 wholesale distributor. At all times relevant to this Complaint, Walgreens distributed prescription
2 opioids throughout the United States, including in Plaintiff's communities.

3 94. Based on the private ARCOS data made available to Plaintiff, drugs sold and
4 distributed by Walgreens represent a substantial market share in Plaintiff's jurisdiction during the
5 relevant time period.

6 95. Walgreens' conduct thus directly caused the worst man-made epidemic in modern
7 medical history—the misuse, abuse, and over-prescription of opioids across this country,
8 including in this jurisdiction.

9 **Walmart**

10 96. Defendant Walmart, Inc. is a Delaware corporation with its principal place of
11 business in Arkansas. Walmart, through its various DEA registrant subsidiaries and affiliated
12 entities, conducts business as a licensed wholesale distributor. At all times relevant to this
13 Complaint, Walmart, Inc. distributed prescription opioids throughout the United States, including
14 in Plaintiff's communities.

15 97. Based on the private ARCOS data made available to Plaintiff, drugs sold and
16 distributed by Walmart, Inc. represent a substantial market share in Plaintiff's jurisdiction during
17 the relevant time period.

18 98. Walmart, Inc.'s conduct thus directly caused the worst man-made epidemic in
19 modern medical history—the misuse, abuse, and over-prescription of opioids across this country,
20 including in this jurisdiction.

21 **Thrifty Payless**

22 99. Defendant Thrifty Payless, Inc. is a California corporation with its principal place
23 of business in Camp Hill, Pennsylvania and is a subsidiary of Rite Aid Corporation.

24 100. At all times relevant to this Complaint, Thrifty Payless, Inc. was in the business of
25 distributing and redistributing prescription opioids throughout the United States, including in this
26 jurisdiction.

1 101. Thrifty Payless, Inc. and Rite Aid Corporation are referred to collectively as
2 “Thrifty Payless.”

3 102. Based on the private ARCOS data made available to Plaintiff, drugs sold and
4 distributed by Thrifty Payless represent a substantial market share in Plaintiff’s jurisdiction
5 during the relevant time period.

6 103. Thrifty Payless’s conduct thus directly caused the worst man-made epidemic in
7 modern medical history—the misuse, abuse, and over-prescription of opioids across this country,
8 including in this jurisdiction.

9 **Advantage Logistics**

10 104. Defendant Advantage Logistics is a privately held business located in Oglesby,
11 Illinois.

12 105. At all times relevant to this Complaint, Advantage Logistics was in the business
13 of distributing and redistributing prescription opioids throughout the United States, including in
14 this jurisdiction.

15 106. Based on the private ARCOS data made available to Plaintiff, drugs sold and
16 distributed by Advantage Logistics represent a substantial market share in Plaintiff’s jurisdiction
17 during the relevant time period.

18 107. Advantage Logistics’ conduct thus directly caused the worst man-made epidemic
19 in modern medical history—the misuse, abuse, and over-prescription of opioids across this
20 country, including in this jurisdiction.

21 108. McKesson, AmerisourceBergen, Cardinal Health, Walgreens, Walmart, Thrifty
22 Payless, and Advantage Logistics collectively are referred to as the “Distributor Defendants.”

23 **John and Jane Does 1-100, inclusive**

24 109. In addition to the Defendants identified herein, the true names, roles, and/or
25 capacities in the wrongdoing alleged herein of Defendants named John and Jane Does 1 through
26 100, inclusive, are currently unknown to Plaintiff, and thus, are named as Defendants under
27 fictitious names as permitted by the rules of this Court. Plaintiff will amend this complaint and

1 identify their true identities and their involvement in the wrongdoing at issue, as well as the
 2 specific causes of action asserted against them when they become known.

3 III. JURISDICTION AND VENUE

4 110. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. The
 5 Court also has federal question subject matter jurisdiction arising out of Plaintiff's RICO claims
 6 pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1961, *et seq.*

7 111. Venue in this Court is proper under 28 U.S.C. § 1391(b).

8 IV. FACTUAL ALLEGATIONS

9 A. History and Background of Medical Use of Opioids

10 112. The term "opioid" refers to a class of drugs that bind with opioid receptors in the
 11 brain and includes natural, synthetic, and semi-synthetic opioids.¹⁰ Generally used to treat pain,
 12 opioids produce multiple effects on the human body, the most significant of which are analgesia,
 13 euphoria, and respiratory depression. In addition, opioids cause sedation and constipation.

14 113. Most of these effects are medically useful in certain situations, but respiratory
 15 depression is the primary limiting factor for the use of opioids. While the body develops
 16 tolerance to the analgesic and euphoric effects of opioids relatively quickly, this is not true with
 17 respect to respiratory depression. At high doses, opioids can and often do arrest respiration
 18 altogether. This is why the risk of opioid overdose is so high, and why many of those who
 19 overdose simply go to sleep and never wake up.

20 114. Natural opioids are derived from the opium poppy and have been used since
 21 antiquity, going as far back as 3400 B.C. The opium poppy contains various opium alkaloids,
 22 three of which are used commercially today: morphine, codeine, and thebaine.

23 115. A 16th-century European alchemist, Paracelsus, is generally credited with
 24 developing a tincture of opium and alcohol called laudanum, but it was a British physician a

25
 26¹⁰ At one time, the term "opiate" was used for natural opioids, while "opioid" referred to synthetic substances
 27 manufactured to mimic opiates. Now, however, most medical professionals use "opioid" to refer broadly to
 natural, semi-synthetic, and synthetic opioids. A fourth class of opioids, endogenous opioids (e.g., endorphins), is
 produced naturally by the human body.

1 century later who popularized the use of laudanum in Western medicine. “Sydenham’s
 2 laudanum” was a simpler tincture than Paracelsus’s and was widely adopted as a treatment not
 3 only for pain, but for coughs, dysentery, and numerous other ailments. Laudanum contains
 4 almost all of the opioid alkaloids and is still available by prescription today.

5 116. Chemists first isolated the morphine and codeine alkaloids in the early 1800s, and
 6 the pharmaceutical company Merck began large-scale production and commercial marketing of
 7 morphine in 1827. During the American Civil War, field medics commonly used morphine,
 8 laudanum, and opium pills to treat the wounded, and many veterans were left with morphine
 9 addictions. It was upper- and middle-class white women, however, who comprised the majority
 10 of opioid addicts in the late 19th-century United States, using opioid preparations widely
 11 available in pain elixirs, cough suppressants, and patent medicines. By 1900, an estimated
 12 300,000 people were addicted to opioids in the United States,¹¹ and many doctors prescribed
 13 opioids solely to prevent their patients from suffering withdrawal symptoms.

14 117. Trying to develop a drug that could deliver opioids’ potent pain relief without
 15 their addictive properties, chemists continued to isolate and refine opioid alkaloids. Heroin, first
 16 synthesized from morphine in 1874, was marketed commercially by the Bayer Pharmaceutical
 17 Company beginning in 1898 as a safe alternative to morphine. Heroin’s market position as a safe
 18 alternative was short-lived, however; Bayer stopped mass-producing heroin in 1913 because of
 19 its dangers. German chemists then looked to the alkaloid thebaine, synthesizing oxymorphone
 20 and oxycodone from thebaine in 1914 and 1916, respectively, with the hope that the different
 21 alkaloid source might provide the benefits of morphine and heroin without the drawbacks.

22 118. But each opioid was just as addictive as the one before it, and eventually the issue
 23 of opioid addiction could not be ignored. The nation’s first Opium Commissioner, Hamilton
 24 Wright, remarked in 1911, “The habit has this nation in its grip to an astonishing extent. Our
 25 prisons and our hospitals are full of victims of it, it has robbed ten thousand businessmen of

26 ¹¹ Nick Miroff, *From Teddy Roosevelt to Trump: How drug companies triggered an opioid crisis a century ago*,
 27 Washington Post (Oct. 17, 2017), https://www.washingtonpost.com/news/retropolis/wp/2017/09/29/the-greatest-drug-fiends-in-the-world-an-american-opioid-crisis-in-1908/?utm_term=.7832633fd7ca.

1 moral sense and made them beasts who prey upon their fellows . . . it has become one of the
 2 most fertile causes of unhappiness and sin in the United States.”¹²

3 119. Concerns over opioid addiction led to national legislation and international
 4 agreements regulating narcotics: the International Opium Convention, signed at the Hague in
 5 1912, and, in the U.S., the Harrison Narcotics Tax Act of 1914. Opioids were no longer marketed
 6 as cure-allss and instead were relegated to the treatment of acute pain.

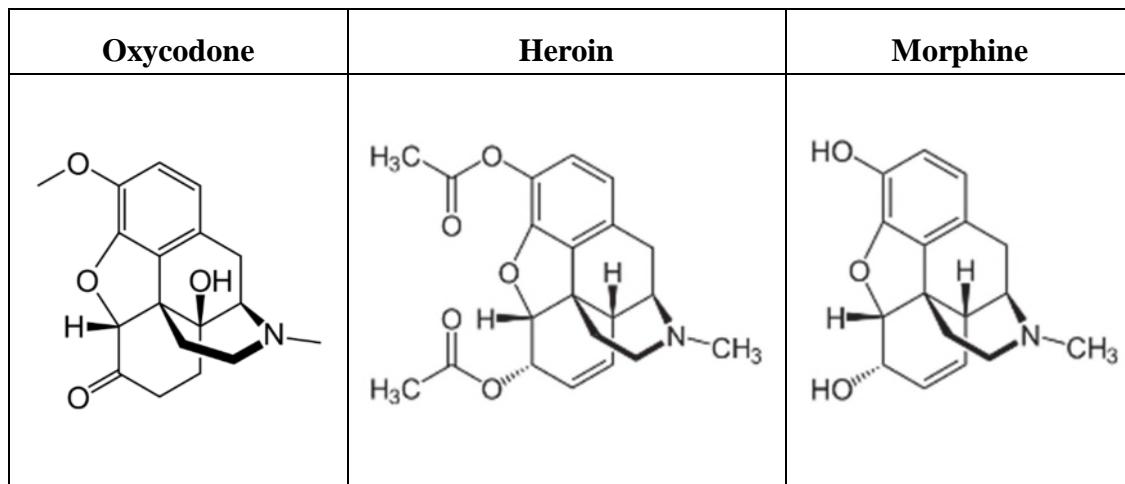
7 120. Throughout the twentieth century, pharmaceutical companies continued to
 8 develop prescription opioids, but these opioids were generally produced in combination with
 9 other drugs, with relatively low opioid content. For example, Percodan, produced by Defendant
 10 Endo since 1950, is oxycodone and aspirin, and contains just under 5 mg of oxycodone.
 11 Percocet, manufactured by Endo since 1971, is the combination of oxycodone and
 12 acetaminophen, with dosage strengths delivering between 2.5 mg and 10 mg of oxycodone.
 13 Vicodin, a combination of hydrocodone and acetaminophen, was introduced in the U.S. in 1978
 14 and is sold in strengths of 5 mg, 7.5 mg, and 10 mg of hydrocodone. Defendant Janssen also
 15 manufactured a drug with 5 mg of oxycodone and 500 mg of acetaminophen, called Tylox, from
 16 1984 to 2012.

17 121. In contrast, OxyContin, the product with the dubious honor of the starring role in
 18 the opioid epidemic, is pure oxycodone. Purdue initially made it available in the following
 19 dosage strengths: 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, 80 mg, and 160 mg. In other
 20 words, the weakest OxyContin delivers as much narcotic as the strongest Percocet, and some
 21 OxyContin tablets delivered sixteen times as much as that.

22 122. Prescription opioids are essentially pharmaceutical heroin; they are synthesized
 23 from the same plant, have similar molecular structures, and bind to the same receptors in the
 24 human brain. It is no wonder then that there is a straight line between prescription opioid abuse
 25
 26

27 ¹² *Id.*

1 and heroin addiction. Indeed, studies show that over 80% of new heroin addicts between 2008
 2 and 2010 started with prescription opioids.¹³



123. Medical professionals describe the strength of various opioids in terms of
 12 “morphine milligram equivalents” (“MME”). According to the CDC, dosages at or above 50
 13 MME/day double the risk of overdose compared to 20 MME/day, and one study found that
 14 patients who died of opioid overdose were prescribed an average of 98 MME/day.

124. Different opioids provide varying levels of MMEs. For example, just 33 mg of
 12 oxycodone provides 50 MME. Thus, at OxyContin’s twice-daily dosing, the 50 MME/day
 13 threshold is reached by a prescription of 15 mg twice daily. One 160 mg tablet of OxyContin,
 14 which Purdue took off the market in 2001, delivered 240 MME.¹⁴

125. As journalist Barry Meier wrote in his 2003 book *Pain Killer: A “Wonder” Drug’s Trail of Addiction and Death*, “In terms of narcotic firepower, OxyContin was a nuclear weapon.”¹⁵

126
 127 ¹³ CM Jones, *Heroin use and heroin use risk behaviors among nonmedical users of prescription opioid pain relievers - United States, 2002-2004 and 2008-2010*, 132(1-2) Drug Alcohol Depend. 95-100 (Sept. 1, 2013), <https://www.ncbi.nlm.nih.gov/pubmed/23410617>.

128
 129 ¹⁴ The wide variation in the MME strength of prescription opioids renders misleading any effort to capture “market
 130 share” by the number of pills or prescriptions attributed to Purdue or other manufacturers. Purdue, in particular,
 131 focused its business on branded, highly potent pills, causing it to be responsible for a significant percent of the
 132 total amount of MME in circulation even though it currently claims to have a small percent of the market share in
 133 terms of pills or prescriptions.

134 ¹⁵ Barry Meier, *Pain Killer: A “Wonder” Drug’s Trail of Addiction and Death* (Rodale 2003).

1 126. Fentanyl, an even more potent and more recent arrival in the opioid tale, is a
 2 synthetic opioid that is 100 times stronger than morphine and 50 times stronger than heroin. First
 3 developed in 1959 by Dr. Paul Janssen under a patent held by Janssen Pharmaceuticals, fentanyl
 4 is increasingly prevalent in the market for opioids created by Defendants' promotion, with
 5 particularly lethal consequences. In many instances, illicit fentanyl is manufactured to look like
 6 oxycodone tablets, in the light blue color and with the "M" stamp of Defendant Mallinckrodt's
 7 30mg oxycodone pills. These lookalike pills have been found around the country.¹⁶

8 **B. The Sackler Family Played a Pivotal Role in Setting the Stage for the Worst Man-
 9 Made Epidemic in Modern Medical History**

10 **1. The Sackler family pioneered the integration of advertising and medicine.**

11 127. Given the history of opioid use in the U.S. and the medical profession's resulting
 12 wariness, the commercial success of Defendants' prescription opioids would not have been
 13 possible without a fundamental shift in prescribers' perception of the risks and benefits of long-
 14 term opioid use.

15 128. As it turned out, Purdue was uniquely positioned to execute just such a maneuver,
 16 thanks to the legacy of a man named Arthur Sackler. The Sackler family is the sole owner of
 17 Purdue and one of the wealthiest families in America, surpassing the wealth of storied families
 18 like the Rockefellers, the Mellons, and the Busches.¹⁷ Because of Purdue and, in particular,
 19 OxyContin, the Sacklers' net worth was \$13 billion as of 2016. Today, all nine members of the
 20 Purdue board are family members, and all of the company's profits go to Sackler family trusts
 21 and entities.¹⁸ Yet the Sacklers have avoided publicly associating themselves with Purdue, letting
 22 others serve as the spokespeople for the company.

23 ¹⁶ See e.g., Sharon Bogen, *Illicit fentanyl found locally in fake opioid pills*, Public Health Insider (Oct. 2, 2017),
 24 <https://web.archive.org/web/20190804203642/https://publichealthinsider.com/2017/10/02/illicit-fentanyl-found-locally-in-fake-opioid-pills/>; *Mislabeled painkillers "a fatal overdose waiting to happen,"* CBS News (Feb. 29, 2016, 10:46am), <https://www.cbsnews.com/news/mislabeled-painkillers-a-fatal-overdose-waiting-to-happen/>.

25 ¹⁷ Alex Morrell, *The OxyContin Clan: The \$14 Billion Newcomer to Forbes 2015 List of Richest U.S. Families*,
 26 Forbes (July 1, 2015, 10:17am), <https://www.forbes.com/sites/alexmorrell/2015/07/01/the-oxycontin-clan-the-14-billion-newcomer-to-forbes-2015-list-of-richest-u-s-families/#3045688775e0>.

27 ¹⁸ David Armstrong, *The man at the center of the secret OxyContin files*, Stat News (May 12, 2016),
 28 <https://www.statnews.com/2016/05/12/man-center-secret-oxycontin-files/>.

1 129. The Sackler brothers—Arthur, Mortimer, and Raymond—purchased a small
 2 patent-medicine company called The Purdue Frederick Company in 1952. While all three
 3 brothers were accomplished psychiatrists, it was Arthur, the oldest, who directed the Sackler
 4 story, treating his brothers more as his protégés than colleagues, putting them both through
 5 medical school and essentially dictating their paths. It was Arthur who created the Sackler
 6 family’s wealth, and it was Arthur who created the pharmaceutical advertising industry as we
 7 know it—laying the groundwork for the OxyContin promotion that would make the Sacklers
 8 billionaires.

9 130. Arthur Sackler was both a psychiatrist and a marketing executive, and, by many
 10 accounts, a brilliant and driven man. He pursued two careers simultaneously, as a psychiatrist at
 11 Creedmoor State Hospital in New York and the president of an advertising agency called
 12 William Douglas McAdams. Arthur pioneered both print advertising in medical journals and
 13 promotion through physician “education” in the form of seminars and continuing medical
 14 education courses. He understood intuitively the persuasive power of recommendations from
 15 fellow physicians and did not hesitate to manipulate information when necessary. For example,
 16 one promotional brochure produced by his firm for Pfizer showed business cards of physicians
 17 from various cities as if they were testimonials for the drug, but when a journalist tried to contact
 18 these doctors, he discovered that they did not exist.¹⁹

19 131. It was Arthur who, in the 1960s, made Valium into the first \$100-million drug, so
 20 popular it became known as “Mother’s Little Helper.” His expertise as a psychiatrist was key to
 21 his success; as his biography in the Medical Advertising Hall of Fame notes, it “enabled him to
 22 position different indications for Roche’s Librium and Valium—to distinguish for the physician
 23 the complexities of anxiety and psychic tension.”²⁰ When Arthur’s client, Roche, developed
 24 Valium, it already had a similar drug, Librium, another benzodiazepine, on the market for
 25 treatment of anxiety. So Arthur invented a condition he called “psychic tension”—essentially

26 19 Meier, *supra* note 15, at 204.

27 20 MAHF Inductees, Arthur M. Sackler, Med. Advert. Hall of Fame, <https://www.mahf.com/mahf-inductees/> (last visited Aug. 30, 2019).

1 stress—and pitched Valium as the solution.²¹ The campaign, for which Arthur was compensated
 2 based on volume of pills sold,²² was a remarkable success.

3 132. Arthur's entrepreneurial drive led him to create not only the advertising for his
 4 clients but also the vehicle to bring their advertisements to doctors—a biweekly newspaper
 5 called the *Medical Tribune*, which he distributed for free to doctors nationwide. Arthur also
 6 conceived a company now called IMS Health Holdings Inc., which monitors prescribing
 7 practices of every doctor in the U.S. and sells this valuable data to pharmaceutical companies
 8 like Defendants, who utilize it to tailor their sales pitches to individual physicians.

9 133. Even as he expanded his business dealings, Arthur was adept at hiding his
 10 involvement in them. When, during a 1962 Senate hearing about deceptive pharmaceutical
 11 advertising, he was asked about a public relations company called Medical and Science
 12 Communications Associates, which distributed marketing from drug companies disguised as
 13 news articles, Arthur was able to truthfully testify that he never was an officer for nor had any
 14 stock in that company. But the company's sole shareholder was his then-wife. Around the same
 15 time, Arthur also successfully evaded an investigative journalist's attempt to link the Sacklers to
 16 a company called MD Publications, which had funneled payments from drug companies to an
 17 FDA official named Henry Welch, who was forced to resign when the scandal broke.²³ Arthur
 18 had set up such an opaque and layered business structure that his connection to MD Publications
 19 was only revealed decades later when his heirs were fighting over his estate.

20 134. Arthur Sackler did not hesitate to manipulate information to his advantage. His
 21 legacy is a corporate culture that prioritizes profits over people. In fact, in 2007, federal
 22 prosecutors conducting a criminal investigation of Purdue's fraudulent advertising of OxyContin
 23 found a "corporate culture that allowed this product to be misbranded with the intent to defraud

24
 25
 26 ²¹ Meier, *supra* note 15, at 202; *One Family Reaped Billions From Opioids*, WBUR On Point (Oct. 23, 2017),
<http://www.wbur.org/onpoint/2017/10/23/one-family-reaped-billions-from-opioids>.

27 ²² WBUR On Point interview, *supra* note 21.

28 ²³ Meier, *supra* note 15, at 210-14.

1 and mislead.”²⁴ Court documents from the prosecution state that “certain Purdue supervisors and
 2 employees, with the intent to defraud or mislead, marketed and promoted OxyContin as less
 3 addictive, less subject to abuse and diversion, and less likely to cause tolerance and withdrawal
 4 than other pain medications . . .”²⁵ Half a century after Arthur Sackler wedded advertising and
 5 medicine, Purdue employees were following his playbook, putting product sales over patient
 6 safety.

7 **2. The Sacklers were personally involved in the development and aggressive**
8 marketing of OxyContin.

9 135. After the Sackler brothers acquired The Purdue Frederick Company in 1952,
 10 Purdue sold products ranging from earwax remover to antiseptic, and it became a profitable
 11 business. As an advertising executive, Arthur Sackler was not involved, on paper at least, in
 12 running Purdue because that would have been a conflict of interest. Raymond Sackler became
 13 Purdue’s head executive while Mortimer Sackler ran Purdue’s UK affiliate.

14 136. Raymond’s son, Richard S. Sackler, began working for Purdue as an assistant to
 15 the president in 1971. In addition to holding various other roles at Purdue, including leading the
 16 firm’s R&D division and the sales and marketing division, Richard Sackler was named president
 17 in 1999. In 2003, Richard Sackler resigned from his role as president to become co-chair of
 18 Purdue’s board of directors.²⁶ He participated extensively in the invention, marketing, and sale of
 19 OxyContin.

20 137. In addition to Richard Sackler’s involvement, other members of the Sackler family
 21 have maintained substantial control over Purdue by occupying the majority of the board seats at
 22 Purdue from 1990 to the present. In 1999, when Richard Sackler became Purdue’s president,
 23 Jonathan, Kathe, and Mortimer Sackler were all vice presidents of Purdue.²⁷ Years later, when

24 Naomi Spencer, *OxyContin manufacturer reaches \$600 million plea deal over false marketing practices*, World Socialist Web Site (May 19, 2007), <https://www.wsws.org/en/articles/2007/05/oxy-m19.html>.

25 Agreed Statement of Facts, *United States v. Purdue Frederick Co.*, No. 1:07-cr-00029 (W.D. Va. May 10, 2007).

26 Christopher Glazek, *The Secretive Family Making Billions from the Opioid Crisis*, Esquire (Oct. 16, 2017), <http://www.esquire.com/news-politics/a12775932/sackler-family-oxycontin/>.

27 First Amended Complaint at ¶179, *Commonwealth of Mass. v. Purdue Pharma L.P.*, C.A. No. 1884-cv-01808 (BLS2) (Mass. Super. Ct. Jan. 31, 2019) (“MA Complaint”).

1 Purdue was mired in investigations by federal and state authorities, they resigned their positions
 2 as vice presidents, but they remained members of Purdue's board of directors. Ilene Sackler
 3 Lefcourt, Beverly Sackler, and Theresa Sackler have served on Purdue's board of directors since
 4 the 1990s. David A. Sackler has served on Purdue's board of directors since 2012.

5 138. In the 1980s, Purdue, through its UK affiliate, acquired a Scottish drug producer
 6 that had developed a sustained-release technology suitable for morphine. Purdue marketed this
 7 extended-release morphine as MS Contin. It quickly became Purdue's best seller. As the patent
 8 expiration for MS Contin loomed, Purdue searched for a drug to replace it. Around that time,
 9 Raymond Sackler's oldest son, Richard Sackler, who was also a trained physician, became more
 10 involved in the management of the company. Richard Sackler had grand ambitions for the
 11 company; according to a long-time Purdue sales representative, "Richard really wanted Purdue
 12 to be big—I mean *really* big."²⁸ Richard Sackler believed Purdue should develop another use for
 13 its "Contin" timed-release system.

14 139. In 1990, Purdue's VP of clinical research, Robert Kaiko, sent a memo to Richard
 15 Sackler and other executives recommending that the company work on a pill containing
 16 oxycodone. At the time, oxycodone was perceived as less potent than morphine, largely because
 17 it was most commonly prescribed as Percocet, the relatively weak oxycodone-acetaminophen
 18 combination pill. MS Contin was not only approaching patent expiration but had always been
 19 limited by the stigma associated with morphine. Oxycodone did not have that problem, and
 20 what's more, it was sometimes mistakenly called "oxycodine," which also contributed to the
 21 perception of relatively lower potency, because codeine is weaker than morphine. Purdue
 22 acknowledged using this to its advantage when it eventually pled guilty to criminal charges of
 23 "misbranding" in 2007, admitting that it was "well aware of the incorrect view held by many
 24 physicians that oxycodone was weaker than morphine" and "did not want to do anything 'to

25
26

27

²⁸ Christopher Glazek, *supra* note 26.

1 make physicians think that oxycodone was stronger or equal to morphine' or to 'take any steps . .
 2 . that would affect the unique position that OxyContin'" held among physicians.²⁹

3 140. Moreover, Purdue's internal emails reveal that Richard Sackler, Kathe Sackler, and
 4 other Purdue executives personally knew that doctors incorrectly believed that OxyContin was
 5 weaker than morphine, leading them to prescribe it much more frequently.³⁰ Despite knowing that
 6 oxycodone is 1.5 times more potent than morphine, Richard Sackler directed staff not to tell
 7 doctors the truth about oxycodone's potency—as that would have likely reduced sales.³¹

8 141. For Purdue and OxyContin to be "really big," Purdue needed to both distance its
 9 new product from the traditional view of narcotic addiction risk and broaden the drug's uses
 10 beyond cancer pain and hospice care. A marketing memo sent to Purdue's top sales executives in
 11 March 1995 recommended that if Purdue could show that the risk of abuse was lower with
 12 OxyContin than with traditional immediate-release narcotics, sales would increase.³² As
 13 discussed below, Purdue did not find or generate any such evidence, but this did not stop Purdue
 14 from making that claim regardless.

15 142. The Sackler Family Defendants recognized OxyContin as the means by which
 16 Purdue, and their own fortune, could become "really big." As Purdue's Senior Vice President in
 17 charge of sales, Richard Sackler made an ominous prediction at the launch party for OxyContin.
 18 He foretold that "the launch of OxyContin Tablets will be followed by a blizzard of prescriptions
 19 that will bury the competition. The prescription blizzard will be so deep, dense, and white...."³³
 20 To create this "blizzard of prescriptions," the Sackler Family Defendants perpetuated deceptions
 21 about the safety of OxyContin and pressed Purdue's sales team to sell ever-increasing volumes of
 22 OxyContin, incentivizing sales of the more expensive (and more dangerous) higher doses.

25 29 *United States v. Purdue Frederick Co.*, *supra* note 25.

30 MA Complaint ¶ 176.

31 *Id.*

32 Meier, *supra* note 15, at 269.

33 First Amended Complaint at ¶ 273, *The People of the State of New York v. Purdue Pharma L.P., et al.*, No. 400016/2018 (Sup. Ct. Suffolk Cnty. Mar. 28, 2019) ("NY Complaint").

1 143. Internal documents also reveal the extent to which the Sackler Family Defendants'
 2 greed motivated their unrelenting drive to sell more pills. For example, in one such email, Richard
 3 Sackler reacted to sales of over \$20 million *per week* with a “yawn”:

4 In 1999, when employee Michael Friedman reported to Richard Sackler that Purdue
 5 was making more than \$20,000,000 per week, Richard replied immediately, at
 6 midnight, that the sales were “not so great.” “After all, if we are to do 900M this
 7 year, we should be running at 75M/month. So it looks like this month could be 80
 or 90M. Blah, humbug. Yawn. Where was I?”³⁴

8 144. Despite the fact that there has been little or no change in the amount of pain
 9 reported in the U.S. over the last twenty years, Purdue recognized an enormous untapped market
 10 for its new drug. As Dr. David Haddox, a Senior Medical Director at Purdue, declared on the
 11 Early Show, a CBS morning talk program, “There are 50 million patients in this country who
 12 have chronic pain that’s not being managed appropriately every single day. OxyContin is one of
 13 the choices that doctors have available to them to treat that.”³⁵

14 145. In pursuit of these 50 million potential customers and Richard Sackler’s “blizzard
 15 of prescriptions,” Purdue poured resources into OxyContin’s sales force and advertising. As
 16 shown below, Purdue’s early promotional spending on OxyContin dwarfed spending on MS
 17 Contin or Defendant Janssen’s spending on Duragesic.³⁶

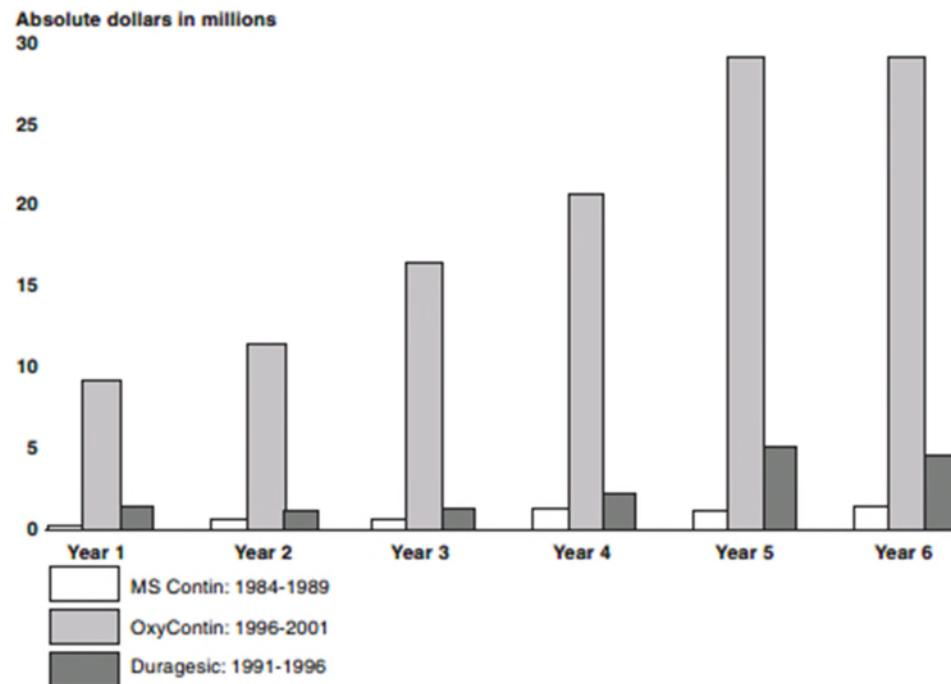
26

³⁴ MA Complaint ¶ 178.

³⁵ *Id.* at 156.

27 ³⁶ *OxyContin Abuse and Diversion and Efforts to Address the Problem*, U.S. Gen. Acct. Off. Rep. to Cong.
 Requesters at 22 (Dec. 2003), <http://www.gao.gov/new.items/d04110.pdf>.

1
 2 **Figure 1: Promotional Spending for Three Opioid Analgesics in First 6 Years of**
 3 **Sales**



Source: DEA and IMS Health, Integrated Promotional Service Audit.

Note: Dollars are 2002 adjusted.

146. Prior to Purdue's launch of OxyContin, no drug company had ever promoted such a pure, high-strength Schedule II narcotic to so wide an audience of general practitioners. Today, one in every five patients who present themselves to physicians' offices with non-cancer pain symptoms or pain-related diagnoses (including acute and chronic pain) receives an opioid prescription.³⁷

147. **3. Following reports of OxyContin abuse and federal investigations, the Sacklers continued to promote opioids but took steps to shield their assets from judgment.**

148. Purdue's aggressive sales push quickly led to reports of OxyContin abuse and fatal overdoses. Both Purdue as a company and the Sacklers as individuals knew about

³⁷ Deborah Dowell, M.D., Tamara M. Haegerich, Ph.D., and Roger Chou, M.D., *CDC Guideline for Prescribing Opioids for Chronic Pain — United States, 2016*, Ctrs. for Disease Control and Prevention (Mar. 18, 2016), <https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm> [hereinafter 2016 CDC Guideline].

1 significant abuse of OxyContin in the first years after the drug's introduction in 1996.³⁸ In early
 2 1999, Purdue's general counsel, Howard Udell, wrote to another Purdue official that the
 3 company had learned of references on the internet to the abuse of Purdue's opioid products.³⁹
 4 Prosecutors wrote that Richard Sackler was told in 1999 about discussions in internet chatrooms
 5 about snorting OxyContin.⁴⁰ Richard Sackler's knowledge in the late 1990s of OxyContin's
 6 status as a highly sought-after street drug was confirmed in his deposition testimony from earlier
 7 litigation, only released to the public in February 2019.⁴¹

8 148. Yet at a 2001 congressional hearing on the increase in opioid abuse, Purdue
 9 President Michael Friedman testified that Purdue first became aware of the abuse of OxyContin in
 10 April 2000, after news reports of people abusing the drug recreationally in Maine.⁴² None of the
 11 Sackler Family Defendants attempted to correct this misrepresentation.

12 149. Purdue has generated estimated sales of more than \$35 billion from opioids since
 13 1996, while raking in more than \$3 billion in 2015 alone. Remarkably, its opioid sales continued
 14 to climb even after a period of media attention and government inquiries regarding OxyContin
 15 abuse in the early 2000s and a criminal investigation culminating in guilty pleas in 2007. Purdue
 16 proved itself skilled at evading full responsibility and continuing to sell through the controversy.
 17 The company's annual opioid sales of \$3 billion in 2015 represent a four-fold increase from its
 18 2006 sales of \$800 million.

19 150. In addition, in November 2007, just months after Purdue pleaded guilty for
 20 deceiving patients and doctors, the Sacklers established Defendant Rhodes Pharmaceuticals L.P.,
 21 a manufacturer of generic opioids, to continue profiting from the epidemic they helped create.

22
 23 ³⁸ Barry Meier, *Origins of an Epidemic: Purdue Pharma Knew Its Opioids Were Widely Abused*, New York Times
 (May 29, 2018), <https://www.nytimes.com/2018/05/29/health/purdue-opioids-oxycontin.html?login=email&auth=login-email>.

24 ³⁹ *Id.*

25 ⁴⁰ *Id.*

26 ⁴¹ David Armstrong, *Sackler Embraced Plan to Conceal OxyContin's Strength from Doctors, Sealed Testimony Shows*, ProPublica (Feb. 21, 2019, 1:45pm), <https://www.propublica.org/article/richard-sackler-oxycontin-oxycodone-strength-conceal-from-doctors-sealed-testimony>.

27 ⁴² Patrick Radden Keefe, *The Family That Built an Empire of Pain*, New Yorker (Oct. 30, 2017),
 <https://www.newyorker.com/magazine/2017/10/30/the-family-that-built-an-empire-of-pain>.

1 This development expanded the operations of Rhodes Technologies, Inc., which was primarily
 2 involved with manufacture of bulk active pharmaceutical ingredients. The connection between
 3 the Sacklers and Rhodes was not widely known until the publication of a 2018 *Financial Times*
 4 article.⁴³

5 151. In public statements responding to the opioid crisis, Purdue has claimed a
 6 minimal role, stating, for example, that OxyContin accounted for only 1.4% of all opioid
 7 analgesic prescriptions written between October 2017 and September 2018.⁴⁴ But the Sacklers'
 8 establishment and control of Rhodes Pharmaceuticals L.P. means that the Sacklers are
 9 responsible for a larger market share than that. As *Financial Times* reported, "Rhodes is a much
 10 larger producer of opioids by volume, and the combined companies accounted for 14.4m
 11 prescriptions that year, giving them an overall market share of 6 percent in 2016."⁴⁵

12 152. The Sackler Family Defendants are beneficial owners of and exercise control over
 13 not only Rhodes Pharmaceuticals L.P., but all four Rhodes Defendants. The Sackler Family
 14 Defendants thus have profited not only from Purdue's earnings on excessive prescription opioid
 15 sales, but also from the sales of opioids by multiple additional corporate entities.

16 153. Purdue did little to change policies regarding the promotion of opioids, and the
 17 Sackler Family Defendants were intimately involved in continuing the misconduct. After the
 18 2007 guilty plea, the Sacklers directed Purdue to hire hundreds of additional sales
 19 representatives.⁴⁶ The Sacklers also required their sales representatives to average at least 7.5
 20 prescribers daily, as well as having those prescribers agree to increasing prescriptions.

21 154. Richard Sackler was especially involved in overseeing and directing sales
 22 operations. He personally went into the field, for example, to supervise Purdue's sales
 23 representatives.⁴⁷ As a result of his time in the field, he argued with Vice President Russell

24

⁴³ See David Crow, *How Purdue's 'One-Two' Punch Fueled the Market for Opioids*, Financial Times (Sept. 9,
 25 2018), <https://www.ft.com/content/8e64ec9c-b133-11e8-8d14-6f049d06439c>.

26 ⁴⁴ Common Myths About OxyContin (oxycodone HCl) Extended-Release Tablets CII, Purdue Pharma,
 27 <https://www.purduepharma.com/news-media/common-myths-about-oxycontin/> (last visited Aug. 30, 2109).

⁴⁵ Crow, *supra* note 43.

⁴⁶ NY Complaint ¶ 394.

⁴⁷ NY Complaint ¶ 393.

1 Gasdia that legally required warnings about opioids were unnecessary and that a warning
 2 “implies a danger of untoward reactions and hazards that simply aren’t there.”⁴⁸

3 155. The other Sackler Family Defendants remained deeply involved in sales as well.
 4 In 2012, for example, Mortimer Sackler suggested Purdue reschedule an annual sales meeting
 5 from January to February so that sales representatives could “get back to work for January and
 6 back in front of doctors who enter the new year refreshed...”⁴⁹ Richard Sackler proposed
 7 canceling the meeting entirely.⁵⁰

8 156. Despite the company’s outward appearances, the Sacklers recognized that the
 9 increased pressure on the company required loyalty to the family. In 2010, Purdue staff provided
 10 the Sacklers a 10-year plan for Purdue’s opioid sales, under which the Sacklers would receive at
 11 least \$700 million per year from 2010 to 2020.⁵¹

12 157. Purdue proved itself skilled at evading full responsibility and continuing to sell
 13 through the controversy. The company’s annual opioid sales of \$3 billion in 2015 represent a
 14 four-fold increase from its 2006 sales of \$800 million.

15 158. Nonetheless, the Sacklers found themselves on the defensive more and more often
 16 after 2010. For example, in late 2017, insurance provider Cigna made public statements about
 17 how opioid companies influence prescribing and dosing.⁵² Cigna also replaced OxyContin on its
 18 list of covered drugs with a competitor’s drug. Upon learning this, Richard Sackler suggested
 19 Purdue replace Cigna as the insurance provider for Purdue’s company health plan.⁵³

20
 21
 22

23⁴⁸ MA Complaint ¶ 356.

24⁴⁹ NY Complaint ¶ 396.

25⁵⁰ *Id.*

26⁵¹ NY Complaint ¶ 420.

27⁵² See Karen Eldred, *Cigna is Committed to Reducing Opioid Use: Removing Oxycontin from Group Commercial Drug Lists on 1/1/18*, Cigna (Oct. 4, 2017), <https://www.cigna.com/newsroom/news-releases/2017/cigna-is-committed-to-reducing-opioid-use-removing-oxycontin-from-group-commercial-drug-lists-on-1118> (“While drug companies don’t control prescriptions, they can help influence patient and doctor conversations by educating people about their medications.”).

⁵³ MA Complaint at ¶ 490.

1 159. Bowing to increasing pressure and scrutiny, the Sacklers resigned from the
 2 Purdue board of directors in 2018.⁵⁴

3 **4. In response to enforcement actions in the United States, the Sacklers have
 4 moved their aggressive opioid marketing—and their wealth—overseas.**

5 160. Since at least 1999, the Sackler Family Defendants have known of the high
 6 potential for abuse of OxyContin. Rather than take steps to ameliorate the damage they have
 7 caused—or to prevent additional harm—the Sackler Family Defendants instead began to shift
 8 profits from Purdue and related entities to their own private trusts and accounts in order to shield
 9 them from creditors. The entities to which the Sackler Family Defendants transferred funds
 10 include PLP Associates Holding L.P., Rosebay Medical Company L.P., and Beacon Company.
 11 These transfers were and are fraudulent, unjustly enriching the Sackler Family Defendants and
 12 shielding funds available for the execution of any judgment against Purdue.

13 161. At the time of Purdue’s 2007 guilty plea—in which The Purdue Frederick
 14 Company, Inc. officially pled guilty—Purdue Pharma L.P. identified a total of 215 “related and
 15 associated entities” in its Non-Prosecution Agreement with the United States. These associated
 16 entities include, for example, petroleum and real estate companies, and twenty-five entities
 17 registered in Bermuda or the British Virgin Islands. The Sacklers—while directing Purdue to
 18 push its highly addictive drug into the poorest corners of Appalachia and to target Medicaid
 19 patients and veterans—availed themselves of the legal gray area available only to the wealthy,
 20 establishing international shell companies to hold and reinvest their profits. Securities filings
 21 show, for example, that the Sacklers have directed Purdue to purchase shares in various
 22 pharmaceutical investments, and then transferred those shares immediately to Rosebay Medical
 23 Company L.P. and Beacon Company.

24 162. Over the years, the Sacklers have voted to distribute billions of dollars to
 25 themselves through such associated entities. Between 2008 and 2016, the Sacklers voted to

26

⁵⁴ See Beth Mole, *Damning court docs show just how far Sacklers went to push OxyContin*, Ars Technica (Jan. 19,
 27 2019, 5:00am), <https://arstechnica.com/science/2019/01/family-behind-oxycontin-called-addicts-criminals-whilepushing-pills/>.

1 distribute over \$2 billion of Purdue's profits to PLP Associates Holding L.P.⁵⁵ The Sacklers also
 2 voted to distribute approximately \$1.8 billion to Rosebay Medical Company L.P. and Beacon
 3 Company between 2008 and 2014.⁵⁶

4 163. Many of the associated entities identified in Purdue's 2007 list of "associated
 5 entities" are part of the Mundipharma network of companies, which was started by the Sacklers
 6 and remains under their control. Mundipharma is integral in allowing the Sacklers to both move
 7 their wealth overseas and continue to profit from the sale of addictive opioids as government
 8 entities in the United States work to rein in opioid prescribing. In contrast to the Sacklers' well-
 9 documented obsession with attaching their family name to art museum wings, endowed chairs at
 10 universities, and the like, the Sacklers have omitted their name from official statements about
 11 Mundipharma's founding. Press release after press release describes the Mundipharma networks
 12 as "founded in 1956 by doctors."⁵⁷ Mundipharma International's website provides more detail
 13 (and corrects the date), but still leaves it founders nameless: "Founded in the US by two
 14 physicians in 1952 and still privately owned, the network has a presence in over 120
 15 countries."⁵⁸ But the Austrian arm of the network is more forthright:

16 The Austrian company Mundipharma Ges.m.b.H. is part of a privately owned
 17 network of independent associated companies that operates internationally. The
 18 founding history dates back to 1952, when the two brothers Mortimer D. Sackler,
 19 M.D. and Raymond R. Sackler, M.D. bought the US-based company Purdue.
 20 Blessed with the necessary pioneering spirit, the owners developed a network of
 21 independent associated companies that is currently represented in numerous
 22 European countries and worldwide. The tradition of a family business has
 23 propagated over the years and is still reflected, e.g. in long-term and trusting
 24 relationships.⁵⁹

25 ⁵⁵ Amended Complaint at ¶ 151, *State of Connecticut v. Purdue Pharma L.P.*, C.A. No. X07 HHD-CV-19-6105325-S (Conn. Super. Ct. May 6, 2019) ("CT Complaint").

26 ⁵⁶ CT Complaint ¶¶ 153-154.

27 ⁵⁷ See, e.g., *Purdue Pharma L.P. Announces Strategic Investment in Oncology R&D*, Market Watch (Nov. 14, 2017), <https://www.marketwatch.com/press-release/purdue-pharma-lp-announces-strategic-investment-in-oncology-rd-2017-11-14>; *Mundipharma strengthens position as a leader in biosimilars with acquisition of development company Cinfa Biotech*, Mundipharma (Oct. 2018), <https://www.mundipharma.com/wp-content/uploads/2018/10/201008-Deal-release-FINAL.pdf>.

28 ⁵⁸ *About Mundipharma*, Mundipharma, <https://www.mundipharma.com/about-mundipharma/> (last visited Aug. 30, 2019).

29 ⁵⁹ *History*, Mundipharma, <https://mundipharma.at/geschichte/> (last visited Aug. 30, 2019).

1 164. As the corporate history webpages of various Mundipharma entities explain, it
 2 was Mundipharma that developed the prolonged-release morphine sulfate tablet in 1973,⁶⁰ which
 3 was later sold in the U.S. as MS Contin and which would be applied to oxycodone to create
 4 OxyContin. At that time, “Mundipharma” included Purdue, the UK-based Napp Pharmaceuticals
 5 Limited, which the Sacklers had acquired in 1966, and Ireland-based Napp Laboratories, which
 6 developed the fateful timed-release coating in 1973.

7 165. Today, the Mundipharma network generates over \$3.4 billion in annual revenue,
 8 primarily from opioids.⁶¹ As noted above, Mundipharma is privately owned. Little public
 9 information is available regarding that ownership. However, the information that is available
 10 reveals that companies and trusts established by the Sacklers own various parts of the
 11 Mundipharma network. For example, trusts for the benefit of Richard and Jonathan Sackler
 12 owned half of Mundipharma Research Ltd. in Cambridge, England.⁶² Rosebay Medical
 13 Company L.P.—owned by trusts for the benefit of the Sackler Family Defendants—is one of the
 14 two owners of Mundipharma’s Australian business, according to data from the Australian
 15 Securities and Investments Commission, and is one of the two current shareholders in
 16 Mundipharma Pharmaceuticals Sdn. Bhd., the network’s Malaysian branch, according to the
 17 Companies Commission of Malaysia.⁶³

18 166. Under the name of Mundipharma, the Sacklers are employing the exact same
 19 playbook in South America, China, India, and other developing markets as they did in the United
 20 States.

21
 22
 23
 24 ⁶⁰ See, e.g., Mundipharma Malaysia website stating “Mundipharma developed prolonged release technology for
 treating chronic pain” in 1973, Mundipharma, <http://www.mundipharma.com.my/about-us> (last visited Aug. 30,
 2019); *History*, Mundipharma, <http://www.mundipharma.ie/history> (last visited Aug. 30, 2019).

25 ⁶¹ Bruce Einhorn, Timothy Annett, and Tim Loh, *OxyContin Billionaires Chase Global Profits to Offset U.S. Woes*,
 Bloomberg (March 30, 2019), <https://www.bloomberg.com/news/articles/2019-03-30/oxycontin-billionaires-chase-global-profits-to-offset-u-s-woes>.

26 ⁶² *Id.*

27 ⁶³ *Id.*

1 167. In May 2017, a dozen members of Congress sent a letter to the World Health
 2 Organization, warning it of the deceptive practices Purdue is unleashing on the rest of the world
 3 through Mundipharma:

4 We write to warn the international community of the deceptive and dangerous
 5 practices of Mundipharma International—an arm of Purdue Pharmaceuticals. The
 6 greed and recklessness of one company and its partners helped spark a public health
 7 crisis in the United States that will take generations to fully repair. We urge the
 8 World Health Organization (WHO) to do everything in its power to avoid allowing
 9 the same people to begin a worldwide opioid epidemic. Please learn from our
 10 experience and do not allow Mundipharma to carry on Purdue's deadly legacy on
 11 a global stage... .

12 Internal documents revealed in court proceedings now tell us that since the early
 13 development of OxyContin, Purdue was aware of the high risk of addiction it
 14 carried. Combined with the misleading and aggressive marketing of the drug by its
 15 partner, Abbott Laboratories, Purdue began the opioid crisis that has devastated
 16 American communities since the end of the 1990s. Today, Mundipharma is using
 17 many of the same deceptive and reckless practices to sell OxyContin abroad. . .

18 In response to the growing scrutiny and diminished U.S. sales, the Sacklers have
 19 simply moved on. On December 18, the Los Angeles Times published an extremely
 20 troubling report detailing how in spite of the scores of lawsuits against Purdue for
 21 its role in the U.S. opioid crisis, and tens of thousands of overdose deaths,
 22 Mundipharma now aggressively markets OxyContin internationally. In fact,
 23 Mundipharma uses many of the same tactics that caused the opioid epidemic to
 24 flourish in the U.S., though now in countries with far fewer resources to devote to
 25 the fallout.⁶⁴

26 168. The Sacklers' pivot to untapped markets, after extracting substantial profits from
 27 communities like Bainbridge Island and leaving the City to address the resulting damage,
 28 underscores that their actions have been knowing, intentional, and motivated by profits
 29 throughout this entire tragic story.

22 C. The Booming Business of Addiction.

23 1. Other Manufacturing Defendants leapt at the opioid opportunity.

24 169. Purdue created a market in which the prescription of powerful opioids for a range
 25 of common aches and pains was not only acceptable but encouraged—but it was not alone.

26 ⁶⁴ Letter from Cong. of the U.S., to Dr. Margaret Chan, Dir.-Gen., World Health Org. (May 3, 2017),
 27 https://web.archive.org/web/20181222034138/https://katherineclark.house.gov/_cache/files/a577bd3c-29ec-4bb9-bdba-1ca71c784113/mundipharma-letter-signatures.pdf.

1 Defendants Endo, Janssen, Mallinckrodt, Teva, and Actavis positioned themselves to take
 2 advantage of the opportunity Purdue created, developing both branded and generic opioids to
 3 compete with OxyContin while misrepresenting the safety and efficacy of their products. In
 4 addition, Defendant Rhodes manufactured multiple generic opioids, profiting from the same
 5 misleading marketing and expanded market for these dangerous drugs.

6 170. Endo, which for decades had sold Percocet and Percodan, both containing
 7 relatively low doses of oxycodone, moved quickly to develop a generic version of extended-
 8 release oxycodone to compete with OxyContin, receiving tentative FDA approval for its generic
 9 version in 2002. As Endo stated in its 2003 Form 10-K, it was the first to file an application with
 10 the FDA for bioequivalent versions of the 10, 20, and 40 mg strengths of OxyContin, which
 11 potentially entitled it to 180 days of generic marketing exclusivity—"a significant advantage."⁶⁵
 12 Purdue responded by suing Endo for patent infringement, litigating its claims through a full trial
 13 and a Federal Circuit appeal—unsuccessfully. As the trial court found, and the appellate court
 14 affirmed, Purdue obtained the oxycodone patents it was fighting to enforce through "inequitable
 15 conduct"—namely, suggesting that its patent applications were supported by clinical data when
 16 in fact they were based on an employee's "insight and not scientific proof."⁶⁶ Endo began selling
 17 its generic extended-release oxycodone in 2005.

18 171. At the same time as Endo was battling Purdue over generic OxyContin—and as
 19 the U.S. was battling increasingly widespread opioid abuse—Endo was working on getting
 20 another branded prescription opioid on the market. In 2002, Endo submitted applications to the
 21 FDA for both immediate-release and extended-release tablets of oxymorphone, branded as
 22 Opana and Opana ER.

23 172. Like oxycodone, oxymorphone is not a new drug; it was first synthesized in
 24 Germany in 1914 and sold in the U.S. by Endo beginning in 1959 under the trade name
 25 Numorphan, in injectable, suppository, and oral tablet forms. But the oral tablets proved highly

26 ⁶⁵ *Endo Pharm. Holdings, Inc. Form 10-K*, U.S. Sec. and Exchange Comm'n, at 4 (Mar. 15, 2004),
http://media.corporate-ir.net/media_files/irol/12/123046/reports/10K_123103.pdf.

27 ⁶⁶ *Purdue Pharma L.P. v. Endo Pharm. Inc.*, 438 F.3d 1123, 1131 (Fed. Cir. 2006).

1 susceptible to abuse. Called “blues” after the light blue color of the 10 mg pills, Numorphan
 2 provoked, according to some users, a more euphoric high than heroin, and even had its moment
 3 in the limelight as the focus of the movie *Drugstore Cowboy*. As the National Institute on Drug
 4 Abuse observed in its 1974 report, “Drugs and Addict Lifestyle,” Numorphan was extremely
 5 popular among addicts for its quick and sustained effect.⁶⁷ Endo withdrew oral Numorphan from
 6 the market in 1979, reportedly for “commercial reasons.”⁶⁸

7 173. Two decades later, however, as communities around the U.S. were first sounding
 8 the alarm about prescription opioids and Purdue executives were being called to testify before
 9 Congress about the risks of OxyContin, Endo essentially reached back into its inventory, dusted
 10 off a product it had previously shelved after widespread abuse, and pushed it into the
 11 marketplace with a new trade name and a potent extended-release formulation.

12 174. The clinical trials submitted with Endo’s first application for approval of Opana
 13 were insufficient to demonstrate efficacy, and some subjects in the trials overdosed and had to be
 14 revived with naloxone, an opioid antagonist used to counter the effects of an overdose. Endo
 15 then submitted new “enriched enrollment” clinical trials, in which trial subjects who do not
 16 respond to the drug are excluded from the trial, and obtained approval. Endo began marketing
 17 Opana and Opana ER in 2006.

18 175. Like Numorphan, Opana ER was highly susceptible to abuse. On June 8, 2017,
 19 the FDA sought removal of Opana ER. In its press release, the FDA indicated that “the agency is
 20 seeking removal based on its concern that the benefits of the drug may no longer outweigh its
 21 risks. This is the first time the agency has taken steps to remove a currently marketed opioid pain
 22 medication from sale due to the public health consequences of abuse.”⁶⁹ On July 6, 2017, Endo
 23
 24

25 67 John Fauber and Kristina Fiore, *Abandoned Painkiller Makes a Comeback*, MedPage Today (May 10, 2015),
<https://www.medpagetoday.com/psychiatry/addictions/51448>.

26 68 *Id.*

27 69 Press Release, U.S. Food & Drug Administration, *FDA requests removal of Opana ER for risks related to abuse*
 (June 8, 2017), <https://www.fda.gov/news-events/press-announcements/fda-requests-removal-pana-er-risks-related-abuse>.

1 agreed to withdraw Opana ER from the market.⁷⁰ Before its withdrawal from the market, Opana
 2 ER generated substantial profits for Endo—more than \$1 billion in revenue in 2010, for example,
 3 and again in 2013.

4 176. Janssen, which already marketed the Duragesic (fentanyl) patch, developed a new
 5 opioid compound called tapentadol in 2009, marketed as Nucynta for the treatment of moderate
 6 to severe pain. Janssen launched the extended-release version, Nucynta ER, for treatment of
 7 chronic pain in 2011. Janssen earned more than \$1 billion in sales of Duragesic in 2009, and
 8 Nucynta and Nucynta ER accounted for \$172 million in sales in 2014.

9 177. Teva also manufactures Actiq, a fentanyl lozenge, and Fentora, a fentanyl tablet.
 10 As noted above, fentanyl is an extremely powerful synthetic opioid. According to the DEA, as
 11 little as two milligrams is a lethal dosage for most people. Actiq has been approved by the FDA
 12 only for the “management of breakthrough cancer pain in patients 16 years and older with
 13 malignancies who are already receiving and who are tolerant to around-the-clock opioid therapy
 14 for the underlying persistent cancer pain.”⁷¹ Fentora has been approved by the FDA only for the
 15 “management of breakthrough pain in cancer patients 18 years of age and older who are already
 16 receiving and who are tolerant to around-the-clock opioid therapy for their underlying persistent
 17 cancer pain.”⁷²

18 178. In 2008, Teva subsidiary Cephalon pled guilty to a criminal violation of the
 19 Federal Food, Drug and Cosmetic Act for its misleading promotion of Actiq and two other drugs
 20 and agreed to pay \$425 million.

21 179. Actavis acquired the rights to Kadian, extended-release morphine, in 2008, and
 22 began marketing Kadian in 2009. Actavis’s opioid products also include Norco, a brand-name
 23 hydrocodone and acetaminophen pill, first approved in 1997. But Actavis, primarily a generic

25 ⁷⁰ *Endo pulls opioid as U.S. seeks to tackle abuse epidemic*, Reuters (July 6, 2017, 9:59am),
<https://www.reuters.com/article/us-endo-intl-opana-idUSKBN19R2II>.

26 ⁷¹ *Prescribing Information, ACTIQ®*, U.S. Food & Drug Admin.,
https://www.accessdata.fda.gov/drugsatfda_docs/label/2009/020747s030lbl.pdf (last visited Aug. 30, 2019).

27 ⁷² *Prescribing Information, FENTORA®*, U.S. Food & Drug Admin.,
https://www.accessdata.fda.gov/drugsatfda_docs/label/2012/021947s015lbl.pdf (last visited Aug. 30, 2019).

1 drug maker, pursued opioid profits through generics, selling generic versions of OxyContin,
 2 Opana, and Duragesic. In 2013, it settled a patent lawsuit with Purdue over its generic version of
 3 “abuse-deterrant” OxyContin, striking a deal that would allow it to market its abuse-deterrant
 4 oxycodone formulation beginning in 2014. Actavis anticipated over \$100 million in gross profit
 5 from generic OxyContin sales in 2014 and 2015.

6 180. Mallinckrodt’s generic oxycodone achieved enough market saturation to have
 7 several street names: “M’s,” based on the imprint on the pills, “blues” because of the pale blue
 8 color of the pills, “roxies,” or “mallies.” Mallinckrodt’s oxy 30s were extremely popular pills for
 9 misuse and abuse, and enormous quantities of Mallinckrodt’s pills went to cash purchases and
 10 non-medical use. As noted above, Mallinckrodt was the subject of a federal investigation based
 11 on diversion of its oxycodone in Florida, where 500 million of its pills were shipped between
 12 2008 and 2012. Federal prosecutors alleged that 43,991 orders from distributors and retailers
 13 were excessive enough be considered suspicious and should have been reported to the DEA.

14 181. Mallinckrodt also pursued a share of the branded opioid market. In 2007,
 15 Mallinckrodt launched Magnacet, an oxycodone and acetaminophen combination pill. In 2008,
 16 Mallinckrodt (then Covidien) launched TussiCaps, a hydrocodone and chlorpheniramine capsule,
 17 marketed as a cough suppressant. And in 2009, Mallinckrodt acquired the U.S. rights to Exalgo,
 18 a potent extended-release hydromorphone tablet, and began marketing it in 2012. Mallinckrodt
 19 further expanded its branded opioid portfolio in 2012 by purchasing Roxicodone from Xanodyne
 20 Pharmaceuticals. In addition, Mallinckrodt developed Xartemis XR, an extended-release
 21 combination of oxycodone and acetaminophen, which the FDA approved in March 2014. In
 22 anticipation of Xartemis XR’s approval, Mallinckrodt hired approximately 200 sales
 23 representatives to promote it, and CEO Mark Trudeau said the drug could generate “hundreds of
 24 millions in revenue.”⁷³

25
 26
 27 ⁷³ Samantha Liss, *Mallinckrodt banks on new painkillers for sales*, St. Louis Bus. Journal (Dec. 30, 2013),
<http://argentcapital.com/mallinckrodt-banks-on-new-painkillers-for-sales/>.

182. These companies' aggressive promotion of their branded opioids dramatically expanded the market for these potent and addictive drugs as a class—and much of the demand was filled by generic opioids. Defendants Mallinckrodt, Actavis, Endo, and Teva all sold generic opioids in addition to their branded products. Purdue and the Sackler Family Defendants were also in the generic business through Rhodes. These Defendants manufactured and shipped massive quantities of generic opioids to communities across the U.S., including Plaintiff's, while failing to uphold their responsibilities to monitor and report suspicious orders.

183. All told, the Manufacturing Defendants have reaped enormous profits from the addiction crisis they spawned.

2. Distributor Defendants knowingly supplied dangerous quantities of opioids while advocating for limited oversight and enforcement.

184. The Distributor Defendants track and keep a variety of information about the pharmacies and other entities to which they sell pharmaceuticals. For example, the Distributor Defendants use “know your customer” questionnaires that track the number and types of pills their customers sell, absolute and relative amounts of controlled substances they sell, whether the customer purchases from other distributors, and types of medical providers in the areas, among other information.

185. These questionnaires and other sources of information available to the Distributor Defendants provide ample data to put the Distributor Defendants on notice of suspicious orders, pharmacies, and doctors.

186. Nevertheless, the Distributor Defendants refused or failed to identify, investigate, or report suspicious orders of opioids to the DEA. Even when the Distributor Defendants had actual knowledge that they were distributing opioids to drug diversion rings, they refused or failed to report these sales to the DEA.

187. By not reporting suspicious opioid orders or known diversions of prescription opioids, not only were the Defendants able to continue to sell opioids to questionable customers,

1 Defendants ensured that the DEA had no basis for decreasing or refusing to increase production
 2 quotas for prescription opioids.

3 188. The Distributor Defendants collaborated with each other and with the
 4 Manufacturing Defendants to maintain distribution of excessive amounts of opioids. One
 5 example of this collaboration came to light through Defendants' work in support of legislation
 6 called the Ensuring Patient Access and Effective Drug Enforcement (EPAEDE) Act, which was
 7 signed into law in 2016 and limited the DEA's ability to stop the flow of opioids. Prior to this
 8 law, the DEA could use an "immediate suspension order" to halt suspicious shipments of pills
 9 that posed an "imminent" threat to the public. The EPAEDE Act changed the required showing
 10 to an "immediate" threat—an impossible standard given the fact that the drugs may sit on a shelf
 11 for a few days after shipment. The law effectively neutralized the DEA's ability to bring
 12 enforcement actions against distributors.

13 189. The legislation was drafted by a former DEA lawyer, D. Linden Barber, who is
 14 now a senior vice president at Defendant Cardinal Health. Prior to leaving the DEA, Barber had
 15 worked with Joseph Rannazzisi, then the chief of the DEA's Office of Diversion Control, to plan
 16 the DEA's fight against the diversion of prescription drugs. So when Barber began working for
 17 Cardinal Health, he knew just how to neutralize the effectiveness of the DEA's enforcement
 18 actions. Barber and other promoters of the EPAEDE Act portrayed the legislation as maintaining
 19 patient access to medication critical for pain relief. In a 2014 hearing on the bill, Barber testified
 20 about the "unintended consequences in the supply chain" of the DEA's enforcement actions. But
 21 by that time, communities across the United States, including Plaintiff City of Bainbridge Island,
 22 were grappling with the "unintended consequences" of Defendants' reckless promotion and
 23 distribution of narcotics.

24 190. Despite egregious examples of drug diversion from around the country, the
 25 promoters of the EPAEDE Act were successful in characterizing the bill as supporting patients'
 26 rights. One of the groups supporting this legislation was the Alliance for Patient Access, a "front
 27 group" as discussed further below, which purports to advocate for patients' rights to have access

1 to medicines, and whose 2017 list of “associate members and financial supporters” included
 2 Defendants Endo, Johnson & Johnson, Actavis, Mallinckrodt, and Teva. In a 2013 “white paper”
 3 titled “Prescription Pain Medication: Preserving Patient Access While Curbing Abuse,” the
 4 Alliance for Patient Access asserted multiple “unintended consequences” of regulating pain
 5 medication, including a decline in prescriptions as physicians feel burdened by regulations and
 6 stigmatized.⁷⁴

7 191. The Distributor Defendants are also part of the activities of the Alliance for
 8 Patient Access, although their involvement is hidden. One example of their involvement was
 9 revealed by the metadata of an electronic document: the letter from the Alliance for Patient
 10 Access in support of the EPAEDE Act. That document was created by Kristen Freitas, a
 11 registered lobbyist and the vice president for federal government affairs of the Healthcare
 12 Distributors Alliance (HDA)—the trade group that represents Defendants McKesson, Cardinal
 13 Health, and AmerisourceBergen.

14 192. Upon information and belief, the collaboration on the EPAEDE Act is just one
 15 example of how the Manufacturing Defendants and the Distributor Defendants, through third-
 16 party “front groups” like the Alliance for Patient Access and trade organizations like HDA,
 17 worked together behind the scenes to ensure that the flow of dangerous narcotics into
 18 communities across the country would not be restricted, and Defendants collaborated in other
 19 ways that remain hidden from public view.

20 193. Another example of collaboration between the Manufacturing Defendants,
 21 Distributor Defendants, and Front Groups is the Pain Care Forum, a coalition of drug makers,
 22 trade groups and non-profit organizations supported by funding from the pharmaceutical
 23 industry. The Pain Care Forum worked behind the scenes to shape federal and state policies
 24 regarding the use of prescription opioids, working to prevent national, state, or local responses to
 25 the growing opioid crisis from interrupting industry profits. The Manufacturing Defendants

26 74 *Prescription Pain Medication: Preserving Patient Access While Curbing Abuse*, Inst. for Patient Access (Oct.
 27 2013), http://1yh21u3cjptv3xjder1dco9mx5s.wpengine.netdna-cdn.com/wp-content/uploads/2013/12/PT_White-Paper_Final.pdf.

1 worked together through the Pain Care Forum, and the Distributor Defendants actively
 2 participated in the Pain Care Forum through the HDA as well.

3 194. The Distributor Defendants have been the subject of numerous enforcement
 4 actions by the DEA. In 2008, for example, McKesson was fined \$13.3 million and agreed to
 5 strengthen its controls by implementing a three-tiered system that would flag buyers who
 6 exceeded monthly thresholds for opioids. As the opioid crisis deepened, the DEA's Office of
 7 Diversion Control, led by Rannazzisi, stepped up enforcement, filing 52 immediate suspension
 8 orders against suppliers and pill mills in 2010 alone. Defendant Cardinal Health was fined \$34
 9 million by the DEA in 2013 for failing to report suspicious orders.

10 195. The Distributor Defendants were not simply passive transporters of opioids. They
 11 intentionally failed to report suspicious orders and actively pushed back against efforts to enforce
 12 the law and restrict the flow of opioids into communities like Bainbridge Island.

13 3. **Pill mills and overprescribing doctors also placed their financial interests
 14 ahead of their patients' interests.**

15 196. Prescription opioid manufacturers and distributors were not the only ones to
 16 recognize an economic opportunity. Around the country, including in Bainbridge Island, certain
 17 doctors or pain clinics ended up doing brisk business dispensing opioid prescriptions. As Dr.
 18 Andrew Kolodny, cofounder of Physicians for Responsible Opioid Prescribing, observed, this
 19 business model meant doctors would "have a practice of patients who'll never miss an
 20 appointment and who pay in cash."⁷⁵

21 197. Moreover, the Manufacturing Defendants' sales incentives rewarded sales
 22 representatives who happened to have pill mills within their territories, enticing those
 23 representatives to look the other way even when their in-person visits to such clinics should have
 24 raised numerous red flags. In one example, a pain clinic in South Carolina was diverting
 25 enormous quantities of OxyContin. People traveled to the clinic from towns as far as 100 miles
 26 away to get prescriptions. Eventually, the DEA's diversion unit raided the clinic, and prosecutors

27 ⁷⁵ Sam Quinones, *Dreamland: The True Tale of America's Opiate Epidemic* 314 (Bloomsbury Press 2015).

1 filed criminal charges against the doctors. But Purdue's sales representative for that territory,
 2 Eric Wilson, continued to promote OxyContin sales at the clinic. He reportedly told another local
 3 physician that this clinic accounted for 40% of the OxyContin sales in his territory. At that time,
 4 Wilson was Purdue's top-ranked sales representative.⁷⁶ In response to news stories about this
 5 clinic, Purdue issued a statement, declaring that "if a doctor is intent on prescribing our
 6 medication inappropriately, such activity would continue regardless of whether we contacted the
 7 doctor or not."⁷⁷

8 198. Another pill mill, this one in Los Angeles, supplied OxyContin to a drug dealer in
 9 Everett, Washington. Purdue was alerted to the existence of this pill mill by one of its regional
 10 sales managers, who in 2009 reported to her supervisors that when she visited the clinic with her
 11 sales representative, "it was packed with a line out the door, with people who looked like gang
 12 members," and that she felt "very certain that this was an organized drug ring[.]" She wrote,
 13 "This is clearly diversion. Shouldn't the DEA be contacted about this?" But her supervisor at
 14 Purdue responded that while they were "considering all angles," it was "really up to [the
 15 wholesaler] to make the report." This clinic was the source of 1.1 million pills trafficked to
 16 Everett, which is a city of around 100,000 people. Purdue waited until after the clinic was shut
 17 down in 2010 to inform the authorities.⁷⁸ Similarly, Purdue received repeated reports in 2008
 18 from a sales representative who visited a family practice doctor in Bothell, Washington; the sales
 19 representative informed Purdue that many of this doctor's patients were men in their twenties
 20 who did not appear to be in pain, who sported diamond studs and \$350 sneakers, and who always
 21 paid for their 80 mg OxyContin prescriptions in cash. Despite being repeatedly alerted to the
 22 doctor's conduct, Purdue did not take any action to report it until three years later.

23
 24

 76 Meier, *supra* note 15, at 298-300.

77 *Id.*

78 Harriet Ryan, Scott Glover, and Lisa Girion, *How black-market OxyContin spurred a town's descent into crime, addiction and heartbreak*, Los Angeles Times (July 10, 2016), <http://www.latimes.com/projects/la-me-oxycontin-everett/>; Harriet Ryan, Lisa Girion, and Scott Glover, *More than 1 million OxyContin pills ended up in the hands of criminals and addicts. What the drugmaker knew*, Los Angeles Times (July 10, 2016), <http://www.latimes.com/projects/la-me-oxycontin-part2/>.

1 199. Whenever examples of opioid diversion and abuse have drawn media attention,
 2 the Manufacturing Defendants have consistently blamed “bad actors.” For example, in 2001,
 3 during a Congressional hearing, Purdue’s attorney Howard Udell answered pointed questions
 4 about how it was that Purdue could utilize IMS Health data to assess their marketing efforts but
 5 not notice a particularly egregious pill mill in Pennsylvania run by a doctor named Richard
 6 Paolino. Udell asserted that Purdue was “fooled” by the “bad actor” doctor: “The picture that is
 7 painted in the newspaper [of Dr. Paolino] is of a horrible, bad actor, someone who preyed upon
 8 this community, who caused untold suffering. And he fooled us all. He fooled law enforcement.
 9 He fooled the DEA. He fooled local law enforcement. He fooled us.”⁷⁹

10 200. But given the closeness with which all Defendants monitored prescribing patterns,
 11 including through IMS Health data, it is highly improbable that they were “fooled.” In fact, a
 12 local pharmacist had noticed the volume of prescriptions coming from Paolino’s clinic and
 13 alerted authorities. Purdue had the prescribing data from the clinic and alerted no one. Rather, it
 14 appears Purdue and other Defendants used the IMS Health data to target pill mills and sell more
 15 pills. Indeed, a Purdue executive referred to Purdue’s tracking system and database as a “gold
 16 mine” and acknowledged that Purdue could identify highly suspicious volumes of prescriptions.

17 201. In addition, the Manufacturing Defendants had the ability to know who the
 18 ultimate customers of their pills were due to their control of “chargeback” data. Chargebacks are
 19 available when distributors purchase the drugs at an established wholesale price, but then sell the
 20 drugs at a discounted price based on contract pricing the Manufacturing Defendants have offered
 21 to the indirect customers. The distributor honors the contract pricing but then submits a
 22 chargeback request to the manufacturer to recover the difference. In order to get the chargeback,
 23 distributors must provide detailed information about the indirect customer and about the product
 24 sold. As a result, Manufacturing Defendants are collecting data on the indirect customers of their
 25 products and know exactly how many of their pills are going where. And like the Distributor

26
 27 ⁷⁹ Meier, *supra* note 15 at 179.

1 Defendants, Manufacturing Defendants are also subject to the monitoring and reporting
 2 requirements of the CSA.

3 202. The Manufacturing Defendants tracked their pills through chargeback and IMS
 4 data and/or received reports from sales representatives making in-person visits. They had the
 5 ability, and the obligation, to monitor and report suspicious orders. But pill mills were highly
 6 lucrative. Defendants knowingly allowed certain clinics to dispense staggering quantities of
 7 potent opioids and then feigned surprise when the most egregious examples eventually made the
 8 nightly news.

9 **4. Widespread prescription opioid use broadened the market for heroin and**
 10 **fentanyl.**

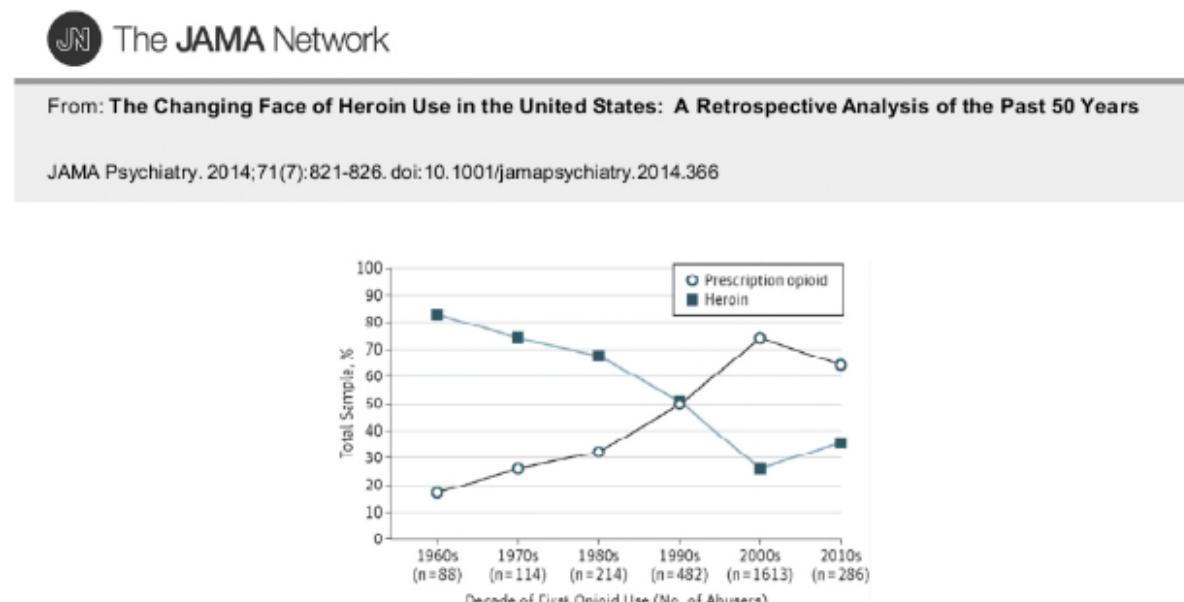
11 203. Defendants' scheme achieved a dramatic expansion of the U.S. market for
 12 opioids, prescription and non-prescription alike. Heroin and fentanyl use has surged—a
 13 foreseeable consequence of Defendants' successful promotion of opioid use coupled with the
 14 sheer potency of their products.

15 204. In his book *Dreamland: The True Tale of America's Opiate Epidemic*, journalist
 16 Sam Quinones summarized the easy entrance of black tar heroin in a market primed by
 17 prescription opioids:

18 His black tar, once it came to an area where OxyContin had already tenderized the
 19 terrain, sold not to tapped-out junkies but to younger kids, many from the suburbs,
 20 most of whom had money and all of whom were white. Their transition from Oxy
 21 to heroin, he saw, was a natural and easy one. Oxy addicts began by sucking on and
 22 dissolving the pills' timed-release coating. They were left with 40 or 80 mg of pure
 23 oxycodone. At first, addicts crushed the pills and snorted the powder. As their
 24 tolerance built, they used more. To get a bigger bang from the pill, they liquefied it
 25 and injected it. But their tolerance never stopped climbing. OxyContin sold on the
 26 street for a dollar a milligram and addicts very quickly were using well over 100
 27 mg a day. As they reached their financial limits, many switched to heroin, since
 they were already shooting up Oxy and had lost any fear of the needle.⁸⁰

⁸⁰ Quinones, *supra* note 75, at 165-66.

1 205. In a study examining the relationship between the abuse of prescription opioids
 2 and heroin, researchers found that 75% of those who began their opioid abuse in the 2000s
 3 reported that their first opioid was a prescription drug.⁸¹ As the graph below illustrates,
 4 prescription opioids replaced heroin as the first opioid of abuse beginning in the 1990s.



15 **Figure Legend:**

16 Percentage of the Total Heroin-Dependent Sample That Used Heroin or a Prescription Opioid as Their First Opioid of Abuse Data
 are plotted as a function of the decade in which respondents initiated their opioid abuse.

18 206. The researchers also found that nearly half of the respondents who indicated that
 19 their primary drug was heroin actually preferred prescription opioids, because the prescription
 20 drugs were legal, and perceived as “safer and cleaner.” But, heroin’s lower price point is a
 21 distinct advantage. While an 80 mg OxyContin might cost \$80 on the street, the same high can
 22 be had from \$20 worth of heroin.

23 207. As noted above, there is little difference between the chemical structures of heroin
 24 and prescription opioids. Between 2005 and 2009, Mexican heroin production increased by over

26 27 ⁸¹ Theodore J. Cicero, PhD, Matthew S. Ellis, MPE, Hilary L. Surratt, PhD, *The Changing Face of Heroin Use in the United States: A Retrospective Analysis of the Past 50 Years*, 71(7) JAMA Psychiatry 821-826 (2014),
<https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1874575>.

1 600%. And between 2010 and 2014, the amount of heroin seized at the U.S.-Mexico border more
 2 than doubled.

3 208. From 2000 to 2017, fatal overdoses related to heroin in the U.S. increased by
 4 766%—from 1,842 deaths in 2000 to 15,958 deaths in 2017.⁸²

5 209. Along with heroin use, fentanyl use is on the rise, as a result of America's
 6 expanded appetite for opioids. But fentanyl, as noted above, is fifty times more potent than
 7 heroin, and overdosing is all too easy. In 2013, fentanyl caused 3,000 overdose deaths. By 2017,
 8 the number of deaths attributed to the potent synthetic opioid had risen to 29,000. Deaths
 9 involving fentanyl increased more than 45 percent in 2017 alone.⁸³

10 210. As Dr. Caleb Banta-Green, senior research scientist at the University of
 11 Washington's Alcohol and Drug Abuse Institute, told The Seattle Times in August 2017, "The
 12 bottom line is opioid addiction is the overall driver of deaths. People will use whatever opioid
 13 they can get. It's just that which one they're buying is changing a bit."⁸⁴

14 211. In addition to the expanded market for opioids of all kinds, the opioid epidemic
 15 has contributed to a resurgence in methamphetamine use, as some opioid users turn to the
 16 stimulant to counter the effects of opioids.⁸⁵ Co-use of methamphetamine and opioids has nearly
 17 doubled in the last six years. From 2011 to 2017, the percentage of opioid users seeking
 18 treatment who reported also using methamphetamine in the prior month jumped from 19% to
 19 34%.⁸⁶ This increase in co-use did not occur with any other drug class.⁸⁷ The two drugs' opposite
 20

21 ⁸² *Overdose Death Rates*, *supra* note 4.

22 ⁸³ Josh Katz and Margot Sanger-Katz, 'The Numbers Are So Staggering.' Overdose Deaths Set a Record Last Year, The New York Times (Nov. 29, 2018), <https://www.nytimes.com/interactive/2018/11/29/upshot/fentanyl-drug-overdose-deaths.html>.

23 ⁸⁴ *Opioids: The Leading Cause of Drug Deaths in Seattle Area*, U. of Wash. Sch. of Pub. Health (Aug. 25, 2017), <https://sph.washington.edu/news-events/news/opioids-leading-cause-drug-deaths-seattle-area>.

24 ⁸⁵ See, e.g., *Opioids and methamphetamine: a tale of two crises*, 391(10122) The Lancet 713 (Feb. 24, 2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)30319-2/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)30319-2/fulltext); Brenda Goodman, MA, *Experts Warn of Emerging 'Stimulant Epidemic'*, WebMD (Apr. 3, 2018), <https://www.webmd.com/mental-health/addiction/news/20180403/experts-warn-of-emerging-stimulant-epidemic>.

25 ⁸⁶ Matthew Ellis, Zachary Kasper, Theodore Cicero, *Twin epidemics: The surging rise of methamphetamine use in chronic opioid users*. 193 Drug and Alcohol Depend. 14 (Dec. 2018), <https://doi.org/10.1016/j.drugalcdep.2018.08.029>.

26 ⁸⁷ *Id.*

1 modes of action balance each other out, making co-use appealing to opioid users who need to be
 2 active at certain times. As one article explained, “[f]or addicts, the drugs pair: Heroin is a downer
 3 and methamphetamine is an upper.”⁸⁸ Researchers studying the “twin epidemics” have found
 4 that some opioid users will turn to methamphetamine as a substitute to opioids to stave off
 5 withdrawals if they cannot obtain opioids.⁸⁹ And as opioids become more difficult to obtain and
 6 afford, users increasingly turn to cheap methamphetamine.⁹⁰ Co-use of opioids and
 7 methamphetamines is rising around the United States, compounding the issues that local
 8 governments face in combating the opioid epidemic.⁹¹

9 **D. The Marketing Defendants Promoted Prescription Opioids Through Several
 10 Channels.**

11 212. Despite knowing the devastating consequences of widespread opioid use, the
 12 Marketing Defendants engaged in a sophisticated and multi-pronged promotional campaign
 13 designed to achieve just that. By implementing the strategies pioneered by Arthur Sackler, these
 14 Defendants were able to achieve the fundamental shift in the perception of opioids that was key
 15 to making them blockbuster drugs.

16 213. The Marketing Defendants disseminated their deceptive statements about opioids
 17 through several channels.⁹² First, these Defendants aggressively and persistently pushed opioids
 18 through sales representatives. Second, these Defendants funded third-party organizations that
 19 appeared to be neutral, but in fact served as additional marketing departments for drug
 20 companies. Third, these Defendants utilized prominent physicians as paid spokespeople—“Key
 21 Opinion Leaders”—to take advantage of doctors’ respect for and reliance on the

22
 23
 24 ⁸⁸ Michelle Theriault Boots, *The silent fallout of the opioid epidemic? Meth.*, Anchorage Daily News (Mar. 30, 2018), <https://www.adn.com/alaska-news/2018/03/19/the-silent-fallout-of-the-opioid-epidemic-meth/#>.

25 ⁸⁹ Randy Dotinga, *Methamphetamine use climbing among opioid users*, Clinical Psychology News (June 29, 2018), <https://www.mdedge.com/psychiatry/article/169254/addiction-medicine/methamphetamine-use-climbing-among-opioid-users>.

26 ⁹⁰ Rachel Martin, *In Rural Ohio, An Opioid Crisis Becomes A Meth Crisis*, NPR (June 6, 2018, 5:11am), <https://www.npr.org/2018/06/06/617422943/in-rural-ohio-an-opioid-crisis-becomes-a-meth-crisis>.

27 ⁹¹ Ellis, *supra* note 86.

⁹² The specific misrepresentations and omissions are discussed below in Section E.

1 recommendations of their peers. Finally, these Defendants also used print and online advertising,
 2 including unbranded advertising, which is not reviewed by the FDA.

3 214. The Marketing Defendants spent substantial sums and resources in making these
 4 communications. For example, Purdue spent more than \$200 million marketing OxyContin in
 5 2001 alone.⁹³

6 **1. The Marketing Defendants aggressively deployed sales representatives to
 7 push their products.**

8 215. The Marketing Defendants communicated to prescribers directly in the form of
 9 in-person visits and communications from sales representatives. The Marketing Defendants'
 10 sales representatives provided health care providers with pamphlets, visual aids, and other
 11 marketing materials designed to increase the rate of opioids prescribed to patients. These sales
 12 representatives knew the doctors they visited relied on the information they provided, and that
 13 the doctors had minimal time or resources to investigate the materials' veracity independently.

14 216. The Marketing Defendants' tactics through their sales representatives—also
 15 known as “detailers”—were particularly aggressive. In 2014, the Marketing Defendants
 16 collectively spent well over \$100 million on detailing branded opioids to doctors.

17 217. Each sales representative has a specific sales territory and is responsible for
 18 developing a list of about 105 to 140 physicians to call on who already prescribe opioids or who
 19 are candidates for prescribing opioids.

20 218. When Purdue launched OxyContin in 1996, its 300-plus sales force had a total
 21 physician call list of approximately 33,400 to 44,500. By 2000, nearly 700 representatives had a
 22 total call list of approximately 70,500 to 94,000 physicians. Each sales representative was
 23 expected to make about thirty-five physician visits per week and typically called on each

24
 25
 26

⁹³ *Oxycontin: Balancing Risks and Benefits: Hearing of the S. Comm. on Health, Education, Labor and Pensions*,
 27 107th Cong. 2 (Feb. 12, 2002) (testimony of Paul Goldenheim, Vice President for Research, Purdue Pharma),
<https://www.gpo.gov/fdsys/pkg/CHRG-107shrg77770/html/CHRG-107shrg77770.htm>.

1 physician every three to four weeks, while each hospital sales representative was expected to
 2 make about fifty physician visits per week and call on each facility every four weeks.⁹⁴

3 219. One of Purdue’s early training memos compared doctor visits to “firing at a
 4 target,” declaring that “[a]s you prepare to fire your ‘message,’ you need to know where to aim
 5 and what you want to hit!”⁹⁵ According to the memo, the target is physician resistance based on
 6 concern about addiction: “The physician wants pain relief for these patients without addicting
 7 them to an opioid.”⁹⁶

8 220. Former sales representative Steven May, who worked for Purdue from 1999 to
 9 2005, explained to a journalist that the most common objection he heard about prescribing
 10 OxyContin was that “it’s just too addictive.”⁹⁷ In order to overcome that objection and hit their
 11 “target,” May and other sales representatives were taught to say, “The delivery system is
 12 believed to reduce the abuse liability of the drug.”⁹⁸ May repeated that line to doctors even
 13 though he “found out pretty fast that it wasn’t true.”⁹⁹ He and his coworkers learned quickly that
 14 people were figuring out how to remove the time-releasing coating, but they continued making
 15 this misrepresentation until Purdue was forced to remove it from the drug’s label.

16 221. Purdue trained its sales representatives to misrepresent the addiction risk in other
 17 ways. May explained that he and his coworkers were trained to “refocus” doctors on “legitimate”
 18 pain patients, and to represent that “legitimate” patients would not become addicted. In addition,
 19 they were trained to say that the 12-hour dosing made the extended-release opioids less “habit-
 20 forming” than painkillers that need to be taken every four hours. Similarly, former Purdue sales
 21
 22
 23

⁹⁴ *OxyContin Abuse and Diversion and Efforts to Address the Problem*, *supra* note 36, at 20.

⁹⁵ Meier, *supra* note 15, at 102.

⁹⁶ *Id.*

⁹⁷ David Remnick, *How OxyContin Was Sold to the Masses* (Steven May interview with Patrick Radden Keefe), *New Yorker* (Oct. 27, 2017), <https://www.newyorker.com/podcast/the-new-yorker-radio-hour/how-oxycontin-was-sold-to-the-masses>.

⁹⁸ Keefe, *supra* note 42; see also Meier, *supra* note 15, at 102 (“Delayed absorption, as provided by OxyContin tablets, is believed to reduce the abuse liability of the drug.”).

⁹⁹ Keefe, *supra* note 42.

1 manager William Gergely told a Florida state investigator in 2002 that sales representatives were
 2 instructed to say that OxyContin was “virtually non-addicting” and “non-habit-forming.”¹⁰⁰

3 222. As Shelby Sherman, a Purdue sales representative from 1974 to 1998, told a
 4 reporter regarding OxyContin promotion, “It was sell, sell, sell. We were directed to lie. Why
 5 mince words about it?”¹⁰¹

6 223. The Marketing Defendants utilized lucrative bonus systems to encourage their
 7 sales representatives to stick to the script and increase opioid sales in their territories. Purdue
 8 paid \$40 million in sales incentive bonuses to its sales representatives in 2001 alone, with annual
 9 bonuses ranging from \$15,000 to nearly \$240,000.¹⁰² The training memo described above, in
 10 keeping with a Wizard of Oz theme, reminded sales representatives: “A pot of gold awaits you
 11 ‘Over the Rainbow’!”¹⁰³

12 224. As noted above, these Defendants have also spent substantial sums to purchase,
 13 manipulate, and analyze prescription data available from IMS Health, which allows them to track
 14 initial prescribing and refill practices by individual doctors, and in turn to customize their
 15 communications with each doctor. The Marketing Defendants’ use of this marketing data was a
 16 cornerstone of their marketing plan,¹⁰⁴ and continues to this day.

17 225. The Marketing Defendants also aggressively pursued family doctors and primary
 18 care physicians perceived to be susceptible to their marketing campaigns. The Marketing
 19 Defendants knew that these doctors relied on information provided by pharmaceutical companies
 20 when prescribing opioids, and that, as general practice doctors seeing a high volume of patients
 21 on a daily basis, they would be less likely to scrutinize the companies’ claims.

22
 23
 24 ¹⁰⁰ Fred Schulte and Nancy McVicar, *Oxycontin Was Touted As Virtually Nonaddictive, Newly Released State*
Records Show, Sun Sentinel (Mar. 6, 2003), http://articles.sun-sentinel.com/2003-03-06/news/0303051301_1_purdue-pharma-oxycontin-william-gergely.

25 ¹⁰¹ Glazek, *supra* note 26.

26 ¹⁰² Art Van Zee, M.D., *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*,
 99(2) Am J Public Health 221-27 (Feb. 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2622774/>.

27 ¹⁰³ Meier, *supra* note 15, at 103.

28 ¹⁰⁴ Van Zee, *The Promotion and Marketing of OxyContin*, *supra* note 102.

1 226. Furthermore, the Marketing Defendants knew or should have known the doctors
 2 they targeted were often poorly equipped to treat or manage pain comprehensively, as they often
 3 had limited resources or time to address behavioral or cognitive aspects of pain treatment or to
 4 conduct the necessary research themselves to determine whether opioids were as beneficial as
 5 these Defendants claimed. In fact, the majority of doctors and dentists who prescribe opioids are
 6 not pain specialists. For example, a 2014 study conducted by pharmacy benefit manager Express
 7 Scripts reviewing narcotic prescription data from 2011 to 2012 concluded that of the more than
 8 500,000 prescribers of opioids during that time period, *only 385* were identified as pain
 9 specialists.¹⁰⁵

10 227. When the Marketing Defendants presented these doctors with sophisticated
 11 marketing material and apparently scientific articles that touted opioids' ability to easily and
 12 safely treat pain, many of these doctors began to view opioids as an efficient and effective way to
 13 treat their patients.

14 228. In addition, sales representatives aggressively pushed doctors to prescribe
 15 stronger doses of opioids. For example, one Purdue sales representative in Florida wrote about
 16 working for a particularly driven regional manager named Chris Sposato and described how
 17 Sposato would drill the sales team on their upselling tactics:

18 It went something like this. "Doctor, what is the highest dose of OxyContin you
 19 have ever prescribed?" "20mg Q12h." "Doctor, if the patient tells you their pain
 20 score is still high you can increase the dose 100% to 40mg Q12h, will you do that?"
 21 "Okay." "Doctor, what if that patient then came back and said their pain score was
 22 still high, did you know that you could increase the OxyContin dose to 80mg Q12h,
 23 would you do that?" "I don't know, maybe." "Doctor, but you do agree that you
 24 would at least Rx the 40mg dose, right?" "Yes."

25 The next week the rep would see that same doctor and go through the same
 26 discussion with the goal of selling higher and higher doses of OxyContin. Miami
 27 District reps have told me that on work sessions with [Sposato] they would sit in
 28 the car and role play for as long as it took until [Sposato] was convinced the rep
 29 was delivering the message with perfection.

¹⁰⁵ *A Nation in Pain*, Express Scripts (Dec. 9, 2014), <http://lab.express-scripts.com/lab/publications/a-nation-in-pain>.

1 229. The Marketing Defendants used not only incentives but competitive pressure to
 2 push sales representatives into increasingly aggressive promotion. One Purdue sales
 3 representative recalled the following scene: "I remember sitting at a round table with others from
 4 my district in a regional meeting while everyone would stand up and state the highest dose that
 5 they had suckered a doctor to prescribe. The entire region!"

6 230. Sales representatives knew that the prescription opioids they were promoting were
 7 dangerous. For example, May had only been at Purdue for two months when he found out that a
 8 doctor he was calling on had just lost a family member to an OxyContin overdose.¹⁰⁶ And as
 9 another sales representative wrote on a public forum:

10 Actions have consequences - so some patient gets Rx'd the 80mg OxyContin when
 11 they probably could have done okay on the 20mg (but their doctor got "sold" on
 12 the 80mg) and their teen son/daughter/child's teen friend finds the pill bottle and
 13 takes out a few 80's... next they're at a pill party with other teens and some kid
 14 picks out a green pill from the bowl... they go to sleep and don't wake up (because
 15 they don't understand respiratory depression) Stupid decision for a teen to
 16 make...yes... but do they really deserve to die?

17 231. The Marketing Defendants rewarded their sales representatives with bonuses
 18 when doctors whom they had detailed wrote prescriptions for their company's drug. Because of
 19 this incentive system, sales representatives stood to gain significant bonuses if they had a pill
 20 mill in their sales region. Indeed, Defendants often helped their sales representatives find and
 21 target such pill mills.

22 232. The high volume of prescriptions written by doctors at pill mills translated
 23 directly to higher bonuses for the sales representatives detailing those pill mills. As a result, sales
 24 representatives continued to promote opioids even at known pill mills.

25 233. The Marketing Defendants applied this combination of intense competitive
 26 pressure and lucrative financial incentives because they knew that sales representatives, with
 27 their frequent in-person visits with prescribers, were incredibly effective. In fact, manufacturers'

¹⁰⁶ Remnick, *supra* note 97.

1 internal documents reveal that they considered sales representatives their “most valuable
 2 resource.”²

3 **2. The Marketing Defendants bankrolled seemingly independent “front**
 4 **groups” to promote opioid use and fight restrictions on opioids.**

5 234. The Marketing Defendants funded, controlled, and operated third-party
 6 organizations that communicated to doctors, patients, and the public the benefits of opioids to
 7 treat chronic pain. These organizations—also known as “front groups”—appeared independent
 8 and unbiased. But in fact, they were but additional paid mouthpieces for the drug manufacturers.
 9 These front groups published prescribing guidelines and other materials that promoted opioid
 10 treatment as a way to address patients’ chronic pain. The front groups targeted doctors, patients,
 11 and lawmakers, all in coordinated efforts to promote opioid prescriptions.

12 235. The Marketing Defendants spent significant financial resources contributing to
 13 and working with these various front groups to increase the number of opioid prescriptions
 14 written.

15 236. The most prominent front group utilized by the Marketing Defendants was the
 16 **American Pain Foundation** (APF), which received more than \$10 million from opioid drug
 17 manufacturers, including Defendants, from 2007 through 2012. For example, Purdue contributed
 18 \$1.7 million and Endo also contributed substantial sums to the APF.¹⁰⁷

19 237. Throughout its existence, APF’s operating budget was almost entirely comprised
 20 of contributions from prescription opioid manufacturers. For instance, nearly 90% of APF’s \$5
 21 million annual budget in 2010 came from “donations” from some of the Marketing Defendants,
 22 and by 2011, APF was entirely dependent on grants from drug manufacturers, including from
 23 Purdue and Endo. Not only did Defendants control APF’s purse strings, APF’s board of directors
 24 was comprised of doctors who were on Defendants’ payrolls, either as consultants or speakers at
 25 medical events.¹⁰⁸

26 ¹⁰⁷Charles Ornstein and Tracy Weber, *The Champion of Painkillers*, ProPublica (Dec. 23, 2011, 9:15am),
 27 <https://www.propublica.org/article/the-champion-of-painkillers>.

¹⁰⁸ *Id.*

1 238. Although holding itself out as an independent advocacy group promoting patient
 2 well-being, APF consistently lobbied against federal and state proposals to limit opioid use.

3 239. Another prominent front group was the **American Academy of Pain Medicine**
 4 (AAPM), which has received over \$2.2 million in funding since 2009 from opioid drug
 5 manufacturers, including Defendants. Like APF, AAPM presented itself as an independent and
 6 non-biased advocacy group representing physicians practicing in the field of pain medicine, but
 7 in fact was just another mouthpiece the Marketing Defendants used to push opioids on doctors
 8 and patients.¹⁰⁹

9 240. Both the APF and the AAPM published treatment guidelines and sponsored and
 10 hosted medical education programs that touted the benefits of opioids to treat chronic pain while
 11 minimizing and trivializing their risks. The treatment guidelines the front groups published—
 12 many of which are discussed in detail below—were particularly important to Defendants in
 13 ensuring widespread acceptance for opioid therapy to treat chronic pain. Defendants realized,
 14 just as the CDC has, that such treatment guidelines can “change prescribing practices,” because
 15 they appear to be unbiased sources of evidence-based information, even when they are in reality
 16 marketing materials.

17 241. For instance, the AAPM, in conjunction with the **American Pain Society** (APS),
 18 issued comprehensive guidelines in 2009 titled “Guideline for the Use of Chronic Opioid
 19 Therapy in Chronic Noncancer Pain – Evidence Review” (“2009 Guidelines”). The 2009
 20 Guidelines promoted opioids as “safe and effective” for treating chronic pain, despite
 21 acknowledging limited evidence to support this statement. Unsurprisingly, the Marketing
 22 Defendants have widely referenced and promoted these guidelines, issued by front groups these
 23 Defendants funded and controlled. These 2009 Guidelines are still available online today.¹¹⁰

24
 25

¹⁰⁹ Tracy Weber and Charles Ornstein, *Two Leaders in Pain Treatment Have Long Ties to Drug Industry*,
 26 ProPublica (Dec. 23, 2011, 9:14am), <https://www.propublica.org/article/two-leaders-in-pain-treatment-have-long-ties-to-drug-industry>.

27

¹¹⁰ *Clinical Guideline for the Use of Chronic Opioid Therapy in Chronic Noncancer Pain*, Am. Pain Soc’y,
<http://americanpainsociety.org/uploads/education/guidelines/chronic-opioid-therapy-cncp.pdf> (last visited Aug. 30,
 2019).

1 242. The **Alliance for Patient Access** (APA), discussed above, was established in
 2 2006, along with the firm that runs it, Woodberry Associates LLC. The APA describes itself as
 3 “a national network of physicians dedicated to ensuring patient access to approved therapies and
 4 appropriate clinical care,” but its list of “Associate Members and Financial Supporters” contains
 5 thirty drug companies, including each of the Marketing Defendants named in this lawsuit. In
 6 addition, the APA’s board members include doctors who have received hundreds of thousands of
 7 dollars in payments from drug companies. As discussed above, the APA has been a vocal critic
 8 of policies restricting the flow of opioids and has supported efforts to curtail the DEA’s ability to
 9 stop suspicious orders of prescription drugs.

10 243. The “white paper” issued by the APA in 2013 also echoed a favorite narrative of
 11 the Marketing Defendants, the supposed distinction between “legitimate patients” on the one
 12 hand and “addicts” on the other, asserting that one “unintended consequence” of regulating pain
 13 medication would be that “[p]atients with legitimate medical needs feel stigmatized, treated like
 14 addicts.”¹¹¹

15 244. Another group utilized by the Marketing Defendants to encourage opioid
 16 prescribing practices, a University of Wisconsin-based organization known as the **Pain & Policy**
 17 **Studies Group**, received \$2.5 million from pharmaceutical companies to promote opioid use and
 18 discourage the passing of regulations against opioid use in medical practice. The Pain & Policy
 19 Studies Group wields considerable influence over the nation’s medical schools as well as within
 20 the medical field in general.¹¹² Purdue was the largest contributor to the Pain & Policy Studies
 21 Group, paying approximately \$1.6 million between 1999 and 2010.¹¹³

22 245. The **Federation of State Medical Boards** (FSMB) of the United States is a
 23 national non-profit organization that represents the seventy-state medical and osteopathic boards
 24

25 ¹¹¹ *Prescription Pain Medication: Preserving Patient Access While Curbing Abuse*, *supra* note 74.

26 ¹¹² *The Role of Pharmaceutical Companies in the Opioid Epidemic*, Addictions.com,
<https://www.addictions.com/opiate/the-role-of-pharmaceutical-companies-in-the-opioid-epidemic/> (last visited
 Aug. 30, 2019).

27 ¹¹³ John Fauber, *UW group ends drug firm funds*, Journal Sentinel (Apr. 20, 2011),
<http://archive.jsonline.com/watchdog/watchdogreports/120331689.html>.

1 of the United States and its territories and co-sponsors the United States Medical Licensing
 2 Examination. Beginning in 1997, FSMB developed model policy guidelines around the treatment
 3 of pain, including opioid use. The original initiative was funded by the Robert Wood Johnson
 4 Foundation, but subsequently AAPM, APS, the University of Wisconsin Pain & Policy Studies
 5 Group, and the American Society of Law, Medicine, & Ethics all made financial contributions to
 6 the project.

7 246. FSMB's 2004 Model Policy encourages state medical boards "to evaluate their
 8 state pain policies, rules, and regulations to identify *any regulatory restrictions or barriers that*
 9 *may impede the effective use of opioids* to relieve pain."¹¹⁴ (Emphasis added).

10 247. One of the most significant barriers to convincing doctors that opioids were safe
 11 to prescribe to their patients for long-term treatment of chronic pain was the fact that many of
 12 those patients would, in fact, become addicted to opioids. If patients began showing up at their
 13 doctors' offices with obvious signs of addiction, the doctors would, of course, become concerned
 14 and likely stop prescribing opioids. And, doctors might stop believing the Marketing Defendants'
 15 claims that addiction risk was low.

16 248. To overcome this hurdle, the Marketing Defendants promoted a concept called
 17 "pseudoaddiction." These Defendants told doctors that when their patients appeared to be
 18 addicted to opioids—for example, asking for more and higher doses of opioids, increasing doses
 19 themselves, or claiming to have lost prescriptions in order to get more opioids—this was not
 20 actual addiction. Rather, the Marketing Defendants told doctors what appeared to be classic signs
 21 of addiction were actually just signs of undertreated pain. The solution to this "pseudoaddiction":
 22 more opioids. Instead of warning doctors of the risk of addiction and helping patients to wean
 23 themselves off powerful opioids and deal with their actual addiction, the Marketing Defendants
 24 pushed even more dangerous drugs onto patients.

25
 26
 27

¹¹⁴ *Model Policy for the Use of Controlled Substances for the Treatment of Pain*, Fed'n of St. Med. Boards of the
 U.S., Inc. (May 2004), https://dprfiles.delaware.gov/medicalpractice/Model_Policy_Treatment_Pain.pdf.

1 249. The FSMB's Model Policy gave a scientific veneer to this fictional and overstated
 2 concept. The policy defines "pseudoaddiction" as "[t]he iatrogenic syndrome resulting from the
 3 misinterpretation of relief seeking behaviors as though they are drug-seeking behaviors that are
 4 commonly seen with addiction" and states that these behaviors "resolve upon institution of
 5 effective analgesic therapy."¹¹⁵

6 250. In May 2012, Senate Finance Committee Chairman Max Baucus and senior
 7 Committee member Chuck Grassley initiated an investigation into the connections of the
 8 Marketing Defendants with medical groups and physicians who have advocated increased opioid
 9 use.¹¹⁶ In addition to Purdue, Endo, and Janssen, the senators sent letters to APF, APS, AAPM,
 10 FSMB, the University of Wisconsin Pain & Policy Studies Group, the Joint Commission on
 11 Accreditation of Healthcare Organization, and the Center for Practical Bioethics, requesting from
 12 each "a detailed account of all payments/transfers received from corporations and any related
 13 corporate entities and individuals that develop, manufacture, produce, market, or promote the use
 14 of opioid-based drugs from 1997 to the present."¹¹⁷

15 251. On the same day as the senators' investigation began, APF announced that it
 16 would "cease to exist, effective immediately."¹¹⁸

17 **3. "It was pseudoscience": the Marketing Defendants paid prominent
 18 physicians to promote their products.**

19 252. The Marketing Defendants retained highly credentialed medical professionals to
 20 promote the purported benefits and minimal risks of opioids. Known as "Key Opinion Leaders"
 21 or "KOLs," these medical professionals were often integrally involved with the front groups
 22

23 ¹¹⁵ *Id.*

24 ¹¹⁶ Baucus, Grassley Seek Answers about Opioid Manufacturers' Ties to Medical Groups, U.S. Senate Comm. on
 Fin. (May 8, 2012), <https://www.finance.senate.gov/chairmans-news/baucus-grassley-seek-answers-about-opioid-manufacturers-ties-to-medical-groups>.

25 ¹¹⁷ Letter from U.S. Senate Comm. on Fin. to Am. Pain Found. (May 8, 2012),
<https://www.finance.senate.gov/imo/media/doc/05092012%20Baucus%20Grassley%20Opioid%20Investigation%20Letter%20to%20American%20Pain%20Foundation2.pdf>.

26 ¹¹⁸ Charles Ornstein and Tracy Weber, *American Pain Foundation Shuts Down as Senators Launch Investigation of Prescription Narcotics*, ProPublica (May 8, 2012, 8:57pm), <https://www.propublica.org/article/senate-panel-investigates-drug-company-ties-to-pain-groups>.

1 described above. The Marketing Defendants paid these KOLs substantial amounts to present at
 2 Continuing Medical Education (“CME”) seminars and conferences, and to serve on their
 3 advisory boards and on the boards of the various front groups.

4 253. The Marketing Defendants also identified doctors to serve as speakers or attend
 5 all-expense-paid trips to programs with speakers.¹¹⁹ The Marketing Defendants used these trips
 6 and programs—many of them lavish affairs—to incentivize the use of opioids while
 7 downplaying their risks, bombarding doctors with messages about the safety and efficacy of
 8 opioids for treating long-term pain. Although often couched in scientific certainty, the Marketing
 9 Defendants’ messages were false and misleading, and helped to ensure that millions of
 10 Americans would be exposed to the profound risks of these drugs.

11 254. It is well documented that this type of pharmaceutical company symposium
 12 influences physicians’ prescribing, even though physicians who attend such symposia believe
 13 that such enticements do not alter their prescribing patterns.¹²⁰ For example, doctors who were
 14 invited to these all-expenses-paid weekends in resort locations like Boca Raton, Florida, and
 15 Scottsdale, Arizona, wrote twice as many prescriptions as those who did not attend.¹²¹

16 255. The KOLs gave the impression they were independent sources of unbiased
 17 information, while touting the benefits of opioids through their presentations, articles, and books.
 18 KOLs also served on committees and helped develop guidelines such as the 2009 Guidelines
 19 described above that strongly encouraged the use of opioids to treat chronic pain.

20 256. One of the most prominent KOLs for the Marketing Defendants’ opioids was Dr.
 21 Russell Portenoy. A respected leader in the field of pain treatment, Dr. Portenoy was highly
 22 influential. Dr. Andrew Kolodny, cofounder of Physicians for Responsible Opioid Prescribing,
 23 described him “lecturing around the country as a religious-like figure. The megaphone for
 24 Portenoy is Purdue, which flies in people to resorts to hear him speak. It was a compelling

25
 26¹¹⁹ Van Zee, *The Promotion and Marketing of OxyContin*, *supra* note 102.
 27¹²⁰ *Id.*
¹²¹ Harriet Ryan, Lisa Girion and Scott Glover, *OxyContin goes global — “We’re only just getting started”*, Los Angeles Times (Dec. 18, 2016), <http://www.latimes.com/projects/la-me-oxycontin-part3/>.

1 message: ‘Docs have been letting patients suffer; nobody really gets addicted; it’s been
 2 studied.’”¹²²

3 257. As one organizer of CME seminars, who worked with Portenoy and Purdue,
 4 pointed out, “had Portenoy not had Purdue’s money behind him, he would have published some
 5 papers, made some speeches, and his influence would have been minor. With Purdue’s millions
 6 behind him, his message, which dovetailed with their marketing plans, was hugely magnified.”¹²³

7 258. In recent years, some of the Marketing Defendants’ KOLs have conceded that
 8 many of their past claims in support of opioid use lacked evidence or support in the scientific
 9 literature.¹²⁴ Dr. Portenoy himself specifically admitted that he overstated the drugs’ benefits and
 10 glossed over their risks, and that he “gave innumerable lectures in the late 1980s and ‘90s about
 11 addiction that weren’t true.”¹²⁵ He mused, “Did I teach about pain management, specifically
 12 about opioid therapy, in a way that reflects misinformation? Well, against the standards of 2012,
 13 I guess I did . . . We didn’t know then what we know now.”¹²⁶

14 259. Dr. Portenoy did not need “the standards of 2012” to discern evidence-based
 15 science from baseless claims, however. When interviewed by journalist Barry Meier for his 2003
 16 book, *Pain Killer*, Dr. Portenoy was more direct: “It was pseudoscience. I guess I’m going to
 17 have always to live with that one.”¹²⁷

18 260. Dr. Portenoy was perhaps the most prominent KOL for prescription opioids, but
 19 he was far from the only one. In fact, Dr. Portenoy and a doctor named Perry Fine co-wrote *A*
 20 *Clinical Guide to Opioid Analgesia*, which contained statements that conflict with the CDC’s
 21 *2016 Guideline for Prescribing Opioids for Chronic Pain*, such as the following examples
 22 regarding respiratory depression and addiction:

23 ¹²² Quinones, *supra* note 75, at 314.

24 ¹²³ *Id.* at 136.

25 ¹²⁴ See, e.g., John Fauber, *Painkiller boom fueled by networking*, Journal Sentinel (Feb. 18, 2012),
<http://archive.jsonline.com/watchdog/watchdogreports/painkiller-boom-fueled-by-networking-dp3p2rn-139609053.html> (finding that a key Endo KOL acknowledged that opioid marketing went too far).

26 ¹²⁵ Thomas Catan and Evan Perez, *A Pain-Drug Champion Has Second Thoughts*, Wall Street Journal (Dec. 17, 2012, 11:36am), <https://www.wsj.com/articles/SB10001424127887324478304578173342657044604>.

27 ¹²⁶ *Id.*

28 ¹²⁷ Meier, *supra* note 15, at 277.

1 At clinically appropriate doses, . . . respiratory rate typically does not decline.
 2 Tolerance to the respiratory effects usually develops quickly, and doses can be
 3 steadily increased without risk.

4 Overall, the literature provides evidence that the outcomes of drug abuse and
 5 addiction are rare among patients who receive opioids for a short period (ie, for
 6 acute pain) and among those with no history of abuse who receive long-term
 7 therapy for medical indications.¹²⁸

8 261. Dr. Fine is a Professor of Anesthesiology at the University of Utah School of
 9 Medicine's Pain Research Center. He has served on Purdue's advisory board, provided medical
 10 legal consulting for Janssen, and participated in CME activities for Endo, along with serving in
 11 these capacities for several other drug companies. He co-chaired the APS-AAPM Opioid
 12 Guideline Panel, served as treasurer of the AAPM from 2007 to 2010 and as president of that
 13 group from 2011 to 2013, and was also on the board of directors of APF.¹²⁹

14 262. In 2011, he and Dr. Scott Fishman, discussed below, published a letter in *JAMA*
 15 called "Reducing Opioid Abuse and Diversion," which emphasized the importance of
 16 maintaining patient access to opioids.¹³⁰ The editors of *JAMA* found that both doctors had
 17 provided incomplete financial disclosures and made them submit corrections listing all their ties
 18 to the prescription painkiller industry.¹³¹

19 263. Dr. Fine also failed to provide full disclosures as required by his employer, the
 20 University of Utah. For example, Dr. Fine told the university that he had received under \$5,000
 21 in 2010 from Johnson & Johnson for providing "educational" services, but Johnson & Johnson's
 22 website states that the company paid him \$32,017 for consulting, promotional talks, meals and
 23 travel that year.¹³²

24 228 Perry G. Fine, MD and Russell K. Portenoy, MD, *A Clinical Guide to Opioid Analgesia* 20 and 34, McGraw-Hill
 25 Companies (2004), <http://www.thblack.com/links/RSD/OpioidHandbook.pdf>.

26 229 Scott M. Fishman, MD, *Incomplete Financial Disclosures in a Letter on Reducing Opioid Abuse and Diversion*,
 27 306 (13) *JAMA* 1445 (Oct. 5, 2011), <https://jamanetwork.com/journals/jama/article-abstract/1104464?redirect=true>.

28 130 Perry G. Fine, MD and Scott M. Fishman, MD, *Reducing Opioid Abuse and Diversion*, 306 (4) *JAMA* 381 (July
 29 27, 2011), <https://jamanetwork.com/journals/jama/article-abstract/1104144?redirect=true>.

30 131 *Incomplete Financial Disclosures in: Reducing Opioid Abuse and Diversion*, 306 (13) *JAMA* 1446 (Oct. 5,
 31 2011), <https://jamanetwork.com/journals/jama/fullarticle/1104453>.

32 132 Weber and Ornstein, *Two Leaders in Pain Treatment*, *supra* note 109.

1 264. In 2012, along with other KOLs, Dr. Fine was investigated for his ties to drug
 2 companies as part of the Senate investigation of front groups described above. When Marianne
 3 Skolek, a reporter for the online news outlet Salem-News.com and a critic of opioid overuse,
 4 wrote an article about him and another KOL being investigated, Dr. Fine fired back, sending a
 5 letter to her editor accusing her of poor journalism and saying that she had lost whatever
 6 credibility she may have had. He criticized her for linking him to Purdue, writing, “I have never
 7 had anything to do with Oxycontin development, sales, marketing or promotion; I have never
 8 been a Purdue Pharma speaker”—neglecting to mention, of course, that he served on Purdue’s
 9 advisory board, as the *JAMA* editors had previously forced him to disclose.¹³³

10 265. Another Utah physician, Dr. Lynn Webster, was the director of Lifetree Clinical
 11 Research & Pain Clinic in Salt Lake City from 1990 to 2010, and in 2013 was the president of
 12 AAPM (one of the front groups discussed above). Dr. Webster developed a five-question survey
 13 he called the Opioid Risk Tool, which he asserted would “predict accurately which individuals
 14 may develop aberrant behaviors when prescribed opioids for chronic pain.”¹³⁴ He published
 15 books titled *The Painful Truth: What Chronic Pain Is Really Like and Why It Matters to Each of*
 16 *Us and Avoiding Opioid Abuse While Managing Pain.*

17 266. Dr. Webster and the Lifetree Clinic were investigated by the DEA for
 18 overprescribing opioids after twenty patients died from overdoses. In keeping with the opioid
 19 industry’s promotional messages, Dr. Webster apparently believed the solution to patients’
 20 tolerance or addictive behaviors was more opioids: he prescribed staggering quantities of pills.
 21 Tina Webb, a Lifetree patient who overdosed in 2007, was taking as many as thirty-two pain
 22 pills a day in the year before she died, all while under doctor supervision.¹³⁵ Carol Ann Bosley,
 23 who sought treatment for pain at Lifetree after a serious car accident and multiple spine

24 ¹³³ Marianne Skolek, *Doctor Under Senate Investigation Lashes Out at Journalist*, Salem News (Aug. 12, 2012,
 25 8:45pm), <http://www.salem-news.com/articles/august122012/perry-fine-folo-ms.php>.

26 ¹³⁴ Lynn Webster and RM Webster, *Predicting aberrant behaviors in opioid-treated patients: preliminary validation*
 27 *of the Opioid Risk Tool* 6 (6) Pain Med. 432 (Nov.-Dec. 2005), <https://www.ncbi.nlm.nih.gov/pubmed/16336480>.

28 ¹³⁵ Jesse Hyde and Daphne Chen, *The untold story of how Utah doctors and Big Pharma helped drive the national*
 29 *opioid epidemic*, Deseret News (Oct. 26, 2017, 12:01am), <https://www.deseretnews.com/article/900002328/the-untold-story-of-how-utah-doctors-and-big-pharma-helped-drive-the-national-opioid-epidemic.html>.

1 surgeries, quickly became addicted to opioids and was prescribed increasing quantities of pills; at
 2 the time of her death, she was on seven different medications totaling approximately 600 pills a
 3 month.¹³⁶ Another woman, who sought treatment from Lifetree for chronic low back pain and
 4 headaches, died at age forty-two after Lifetree clinicians increased her prescriptions to fourteen
 5 different drugs, including multiple opioids, for a total of 1,158 pills a month.¹³⁷

6 267. By these numbers, Lifetree resembles the pill mills and “bad actors” that the
 7 Marketing Defendants blame for opioid overuse. But Dr. Webster was an integral part of
 8 Defendants’ marketing campaigns, a respected pain specialist who authored numerous CMEs
 9 sponsored by Endo and Purdue. And the Marketing Defendants promoted his Opioid Risk Tool
 10 and similar screening questionnaires as measures that allow powerful opioids to be prescribed for
 11 chronic pain.

12 268. Even in the face of patients’ deaths, Dr. Webster continues to promote a pro-
 13 opioid agenda, even asserting that alternatives to opioids are risky because “[i]t’s not hard to
 14 overdose on NSAIDs or acetaminophen.”¹³⁸ He argued on his website in 2015 that DEA
 15 restrictions on the accessibility of hydrocodone harm patients, and in 2017 tweeted in response to
 16 CVS Caremark’s announcement that it will limit opioid prescriptions that “CVS Caremark’s new
 17 opioid policy is wrong, and it won’t stop illegal drugs.”¹³⁹

18 269. Another prominent KOL is Dr. Scott M. Fishman, the Chief of the Department of
 19 Pain Medicine at University of California, Davis. He has served as president of APF and AAPM,
 20 and as a consultant and a speaker for Purdue, in addition to providing the company grant and
 21 research support. He also has had financial relationships with Endo and Janssen. He wrote a
 22 book for the FSMB called *Responsible Opioid Use: A Physician’s Guide*, which was distributed
 23 to over 165,000 physicians in the U.S.

24 ¹³⁶ Stephanie Smith, *Prominent pain doctor investigated by DEA after patient deaths*, CNN (Dec. 20, 2013,
 25 7:06am), <http://www.cnn.com/2013/12/20/health/pain-pillar/index.html>.

26 ¹³⁷ *Id.*

27 ¹³⁸ APF releases opioid medication safety module, Drug Topics (May 10, 2011),
<https://www.drugtopics.com/clinical-news/apf-releases-opioid-medication-safety-module>.

¹³⁹ Lynn Webster, MD (@LynnRWebsterMD), Twitter (Dec. 7, 2017, 1:45pm),
<https://twitter.com/LynnRWebsterMD/status/938887130545360898>.

1 270. Dr. Fishman and Dr. Fine, along with Dr. Seddon Savage, published an editorial
 2 in *The Seattle Times* in 2010, arguing that Washington legislation proposed to combat
 3 prescription opioid abuse would harm patients, particularly by requiring chronic pain patients to
 4 consult with a pain specialist before receiving a prescription for a moderate to high dose of an
 5 opioid.¹⁴⁰

6 271. These KOLs and others—respected specialists in pain medicine—proved to be
 7 highly effective spokespeople for the Marketing Defendants.

8 **4. The Marketing Defendants used “unbranded” advertising as a platform for
 9 their misrepresentations about opioids.**

10 272. The Marketing Defendants also aggressively promoted opioids through
 11 “unbranded advertising” to generally tout the benefits of opioids without specifically naming a
 12 particular brand-name opioid drug. Instead, unbranded advertising is usually framed as “disease
 13 awareness”—encouraging consumers to “talk to your doctor” about a certain health condition
 14 without promoting a specific product. A trick often used by pharmaceutical companies,
 15 unbranded advertising gives the pharmaceutical companies considerable leeway to make
 16 sweeping claims about health conditions or classes of drugs. In contrast, a “branded”
 17 advertisement that identifies a specific medication and its indication (i.e., the condition which the
 18 drug is approved to treat) must also include possible side effects and contraindications—what the
 19 FDA Guidance on pharmaceutical advertising refers to as “fair balance.” Branded advertising is
 20 also subject to FDA review for consistency with the drug’s FDA-approved label.

21 273. Unbranded advertising allows pharmaceutical manufacturers to sidestep those
 22 requirements; “fair balance” and consistency with a drug’s label are not required.

23 274. By engaging in unbranded advertising, the Marketing Defendants were and are
 24 able to avoid FDA review and issue general statements to the public including that opioids
 25 improve function, that addiction usually does not occur, and that withdrawal can easily be

26 274¹⁴⁰ Perry G. Fine, Scott M. Fishman, and Seddon R. Savage, *Bill to combat prescription abuse really will harm
 patients in pain*, Seattle Times (Mar. 16, 2010, 4:39pm),
http://old.seattletimes.com/html/opinion/2011361572_guest17fine.html.

1 managed. The Marketing Defendants' unbranded advertisements either did not disclose the risks
2 of addiction, abuse, misuse, and overdose, or affirmatively denied or minimized those risks.

3 275. Through the various marketing channels described above—all of which the
4 Marketing Defendants controlled, funded, and facilitated, and for which they are legally
5 responsible—these Defendants made false or misleading statements about opioids despite the
6 lack of scientific evidence to support their claims, while omitting the true risk of addiction and
7 death.

8 **E. Specific Misrepresentations Made by the Marketing Defendants.**

9 276. All the Marketing Defendants have made and/or continue to make false or
10 misleading claims in the following areas: (1) the low risk of addiction to opioids, (2) opioids'
11 efficacy for chronic pain and ability to improve patients' quality of life with long-term use, (3)
12 the lack of risk associated with higher dosages of opioids, (4) the need to prescribe more opioids
13 to treat withdrawal symptoms, and (5) that risk-mitigation strategies and abuse-deterring
14 technologies allow doctors to safely prescribe opioids for chronic use. These illustrative but non-
15 exhaustive categories of the Marketing Defendants' misrepresentations about opioids are
16 described in detail below.

17 **1. The Marketing Defendants falsely claimed that the risk of opioid abuse and
18 addiction was low.**

19 277. Collectively, the Marketing Defendants have made a series of false and
20 misleading statements about the low risk of addiction to opioids over the past twenty years. The
21 Marketing Defendants have also failed to take sufficient remedial measures to correct their false
22 and misleading statements.

23 278. The Marketing Defendants knew that many physicians were hesitant to prescribe
24 opioids other than for acute or cancer-related pain because of concerns about addiction. Because
25 of this general perception, sales messaging about the low risk of addiction was a fundamental
26 prerequisite misrepresentation.

1 279. Purdue launched OxyContin in 1996 with the statement that OxyContin's
 2 patented continuous-release mechanism "is believed to reduce the abuse liability." This
 3 statement, which appeared in OxyContin's label and which sales representatives were taught to
 4 repeat verbatim, was unsupported by any studies, and was patently false. The continuous-release
 5 mechanism was simple to override, and the drug correspondingly easy to abuse. This fact was
 6 known, or should have been known, to Purdue prior to its launch of OxyContin, because people
 7 had been circumventing the same continuous-release mechanism for years with MS Contin,
 8 which in fact commanded a high street price because of the dose of pure narcotic it delivered. In
 9 addition, with respect to OxyContin, Purdue researchers notified company executives, including
 10 Raymond and Richard Sackler, by email that patients in their clinical trials were abusing the drug
 11 despite the timed-release mechanism.¹⁴¹

12 280. In 2007, as noted above, Purdue pleaded guilty to misbranding a drug, a felony
 13 under the Food, Drug, and Cosmetic Act. 21 U.S.C. § 331(a)(2). As part of its guilty plea,
 14 Purdue agreed that certain Purdue supervisors and employees had, "with the intent to defraud or
 15 mislead, marketed and promoted OxyContin as less addictive, less subject to abuse and
 16 diversion, and less likely to cause tolerance and withdrawal than other pain medications" in the
 17 following ways:

18 Trained PURDUE sales representatives and told some health care providers that it
 19 was more difficult to extract the oxycodone from an OxyContin tablet for the
 20 purpose of intravenous abuse, although PURDUE's own study showed that a drug
 21 abuser could extract approximately 68% of the oxycodone from a single 10mg
 OxyContin tablet by crushing the tablet, stirring it in water, and drawing the
 solution through cotton into a syringe;

22 Told PURDUE sales representatives they could tell health care providers that
 23 OxyContin potentially creates less chance for addiction than immediate-release
 opioids;

24 Sponsored training that taught PURDUE sales supervisors that OxyContin had
 25 fewer "peak and trough" blood level effects than immediate-release opioids
 26 resulting in less euphoria and less potential for abuse than short-acting opioids;

27 ¹⁴¹ WBUR On Point interview, *supra* note 21.

1 Told certain health care providers that patients could stop therapy abruptly without
 2 experiencing withdrawal symptoms and that patients who took OxyContin would
 3 not develop tolerance to the drug; and

4 Told certain health care providers that OxyContin did not cause a “buzz” or
 5 euphoria, caused less euphoria, had less addiction potential, had less abuse
 6 potential, was less likely to be diverted than immediate-release opioids, and could
 7 be used to “weed out” addicts and drug seekers.¹⁴²

8 281. All these statements were false and misleading. But Purdue had not stopped there.

9 Purdue—and later the Defendants—manipulated scientific research and utilized respected
 10 physicians as paid spokespeople to convey its misrepresentations about low addiction risk in
 11 much more subtle and pervasive ways, so that the idea that opioids used for chronic pain posed a
 12 low addiction risk became so widely accepted in the medical community that Defendants were
 13 able to continue selling prescription opioids for chronic pain—even after Purdue’s criminal
 14 prosecution.

15 282. When it launched OxyContin, Purdue knew it would need data to overcome
 16 decades of wariness regarding opioid use. It needed some sort of research to back up its
 17 messaging. But Purdue had not conducted any studies about abuse potential or addiction risk as
 18 part of its application for FDA approval for OxyContin. Purdue (and, later, the other Defendants)
 19 found this “research” in the form of a one-paragraph letter to the editor published in the *New
 20 England Journal of Medicine* (NEJM) in 1980.

21 283. This letter, by Dr. Hershel Jick and Jane Porter, declared the incidence of
 22 addiction “rare” for patients treated with opioids.¹⁴³ They had analyzed a database of hospitalized
 23 patients who were given opioids in a controlled setting to ease suffering from acute pain. These
 24 patients were not given long-term opioid prescriptions or provided opioids to administer to
 25 themselves at home, nor was it known how frequently or infrequently and in what doses the

26 ¹⁴² *United States v. Purdue Frederick Co.*, *supra* note 25; see also, Plea Agreement, *United States v. Purdue
 27 Frederick Co.*, No. 1:07-cr-00029 (W.D. Va. May 10, 2007).

¹⁴³ Jane Porter and Herschel Jick, MD, *Addiction Rare in Patients Treated with Narcotics*, 302(2) *New Eng. J. Med.*
 123 (Jan. 10, 1980), <https://www.nejm.org/doi/10.1056/NEJM198001103020221>.

1 patients were given their narcotics. Rather, it appears the patients were treated with opioids for
2 short periods of time under in-hospital doctor supervision.

3 **ADDICTION RARE IN PATIENTS TREATED
4 WITH NARCOTICS**

5 *To the Editor:* Recently, we examined our current files to deter-
6 mine the incidence of narcotic addiction in 39,946 hospitalized
7 medical patients¹ who were monitored consecutively. Although
8 there were 11,882 patients who received at least one narcotic pre-
9 paration, there were only four cases of reasonably well documented
10 addiction in patients who had no history of addiction. The addic-
11 tion was considered major in only one instance. The drugs im-
12 plicated were meperidine in two patients,² Percodan in one, and
13 hydromorphone in one. We conclude that despite widespread use of
14 narcotic drugs in hospitals, the development of addiction is rare in
15 medical patients with no history of addiction.

16 JANE PORTER
17 HERSHEL JICK, M.D.
18 Boston Collaborative Drug
19 Surveillance Program
20 Waltham, MA 02154 Boston University Medical Center

- 21 1. Jick H, Miettinen OS, Shapiro S, Lewis GP, Siskind Y, Sloane D.
22 Comprehensive drug surveillance. *JAMA*. 1970; 213:1455-60.
23 2. Miller RR, Jick H. Clinical effects of meperidine in hospitalized medical
24 patients. *J Clin Pharmacol*. 1978; 18:180-8.

25 284. As Dr. Jick explained to a journalist years later, he submitted the statistics to
26 NEJM as a letter because the data were not robust enough to be published as a study, and that
27 one could not conclude anything about long-term use of opioids from his figures.¹⁴⁴ Dr. Jick also
28 recalled that no one from drug companies or patient advocacy groups contacted him for more
29 information about the data.¹⁴⁵

30 285. Nonetheless, the Marketing Defendants regularly invoked this letter as proof of
31 the low addiction risk in connection with taking opioids despite its obvious shortcomings. These
32 Defendants' egregious misrepresentations based on this letter included claims that *less than one*
33 percent of opioid users become addicted.

34 286. The limited facts of the study did not deter the Marketing Defendants from using
35 it as definitive proof of opioids' safety. The enormous impact of the Marketing Defendants'
36

37

¹⁴⁴ Meier, *supra* note 15, at 174.

38 ¹⁴⁵ *Id.*

1 misleading amplification of this letter was well documented in another letter published in NEJM
 2 on June 1, 2017, describing the way the one-paragraph 1980 letter had been irresponsibly cited
 3 and in some cases “grossly misrepresented.” In particular, the authors of this letter explained:

4 [W]e found that a five-sentence letter published in the *Journal* in 1980 was heavily
 5 and uncritically cited as evidence that addiction was rare with long-term opioid
 6 therapy. We believe that this citation pattern contributed to the North American
 7 opioid crisis by helping to shape a narrative that allayed prescribers’ concerns about
 8 the risk of addiction associated with long-term opioid therapy . . .¹⁴⁶

9 287. Unfortunately, by the time of this analysis and the CDC’s findings in 2016, the
 10 damage had already been done. “It’s difficult to overstate the role of this letter,” said Dr. David
 11 Juurlink of the University of Toronto, who led the analysis. “It was the key bit of literature that
 12 helped the opiate manufacturers convince front-line doctors that addiction is not a concern.”¹⁴⁷

13 288. The Marketing Defendants successfully manipulated the 1980 Porter and Jick
 14 letter as the “evidence” supporting their fundamental misrepresentation that the risk of opioid
 15 addiction was low when opioids were prescribed to treat pain. For example, in its 1996 press
 16 release announcing the release of OxyContin, Purdue advertised that the “fear of addiction is
 17 exaggerated” and quoted the chairman of the American Pain Society Quality of Care Committee,
 18 who claimed that “there is very little risk of addiction from the proper uses of these [opioid]
 19 drugs for pain relief.”¹⁴⁸

20
 21
 22
 23
 24 ¹⁴⁶ Pamela T.M. Leung, B.Sc. Pharm., Erin M. Macdonald, M.Sc., Matthew B. Stanbrook, M.D., Ph.D., Irfan Al Dhalla, M.D., David N. Juurlink, M.D., Ph.D., A 1980 Letter on the Risk of Opioid Addiction, 376 New Eng. J. Med. 2194-95 (June 1, 2017), <http://www.nejm.org/doi/full/10.1056/NEJMc1700150#t=article>.

25 ¹⁴⁷ Painful words: How a 1980 letter fueled the opioid epidemic, STAT News (May 31, 2017),
<https://www.statnews.com/2017/05/31/opioid-epidemic-nejm-letter/>.

26 ¹⁴⁸ Press Release, OxyContin, New Hope for Millions of Americans Suffering from Persistent Pain: Long-Acting OxyContin Tablets Now Available to Relieve Pain (May 31, 1996, 3:47pm),
<http://documents.latimes.com/oxycontin-press-release-1996/>.

1 PR Newswire
2

3 **May** 31, 1996, Friday - 15:47 Eastern Time

4 **NEW HOPE FOR MILLIONS OF AMERICANS SUFFERING FROM
5 PERSISTENT**

6 **The fear of addiction is exaggerated.**

7 One cause of patient resistance to appropriate pain treatment -- the
8 fear of addiction -- is largely unfounded. According to Dr. Max,
9 "Experts agree that most pain caused by surgery or cancer can be
10 relieved, primarily by carefully adjusting the dose of opioid
11 (narcotic) pain reliever to each patient's need, and that there is very
12 little risk of addiction from the proper uses of these drugs for pain
relief."

13 Paul D. Goldenheim, M.D., Vice President of **Purdue Pharma** L.P. in
14 Norwalk, Connecticut, agrees with this assessment. "Proper use of
15 medication is an essential weapon in the battle against persistent
pain. But too often fear, misinformation and poor communication stand
in the way of their legitimate use."

16 289. Dr. Portenoy, the Purdue KOL mentioned previously, also stated in a promotional
17 video from the 1990s that "the likelihood that the treatment of pain using an opioid drug which is
18 prescribed by a doctor will lead to addiction is extremely low."¹⁴⁹



149 Catan and Perez, *supra* note 125.

1 290. Purdue also specifically used the Porter and Jick letter in its 1998 promotional
 2 video, "I got my life back," in which Dr. Alan Spanos says, "In fact, the rate of addiction
 3 amongst pain patients who are treated by doctors *is much less than 1%*."¹⁵⁰



12 291. The Porter and Jick letter was also used on Purdue's "Partners Against Pain"
 13 website, which was available in the early 2000s, where Purdue claimed that the addiction risk
 14 with OxyContin was very low.¹⁵¹

15 292. The Porter and Jick letter was used frequently in literature given to prescribing
 16 physicians and to patients who were prescribed OxyContin.¹⁵²

17 293. In addition to the Porter and Jick letter, the Marketing Defendants exaggerated the
 18 significance of a study published in 1986 regarding cancer patients treated with opioids.
 19 Conducted by Dr. Portenoy and another pain specialist, Dr. Kathleen Foley, the study involved
 20 only 38 patients, who were treated for non-malignant cancer pain with low doses of opioids (the
 21 majority were given less than 20 MME/day, the equivalent of only 13 mg of oxycodone).¹⁵³ Of
 22 these thirty-eight patients, only two developed problems with opioid abuse, and Dr. Portenoy and
 23

24 ¹⁵⁰ Our Amazing World, *Purdue Pharma OxyContin Commercial*, <https://www.youtube.com/watch?v=Er78Dj5hyel>
 (last visited Aug. 30, 2019) (emphasis added).

25 ¹⁵¹ Van Zee, *The Promotion and Marketing of OxyContin*, *supra* note 102.

26 ¹⁵² Art Van Zee, M.D., *The OxyContin Abuse Problem: Spotlight on Purdue Pharma's Marketing* (Aug. 22, 2001),
<https://web.archive.org/web/20170212210143/https://www.fda.gov/ohrms/dockets/dockets/01n0256/c000297-A.pdf>.

27 ¹⁵³ Russell K. Portenoy and Kathleen M. Foley, *Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases*, 25 Pain 171-86 (1986), <https://www.ncbi.nlm.nih.gov/pubmed/2873550>.

1 Dr. Foley concluded that “opioid maintenance therapy can be a safe, salutary and more humane
 2 alternative to the options of surgery or no treatment in those patients with intractable non-
 3 malignant pain and no history of drug abuse . . .”¹⁵⁴ Notwithstanding the small sample size, low
 4 doses of opioids involved, and the fact that all the patients were cancer patients, the Marketing
 5 Defendants used this study as “evidence” that high doses of opioids were safe for the treatment
 6 of chronic non-cancer pain.

7 294. The Marketing Defendants’ repeated misrepresentations about the low risk of
 8 opioid addiction were so effective that this concept became part of the conventional wisdom. Dr.
 9 Nathaniel Katz, a pain specialist, recalls learning in medical school that previous fears about
 10 addiction were misguided, and that doctors should feel free to allow their patients the pain relief
 11 that opioids can provide. He did not question this until one of his patients died from an overdose.
 12 Then, he searched the medical literature for evidence of the safety and efficacy of opioid
 13 treatment for chronic pain. “There’s not a shred of research on the issue. All these so-called
 14 experts in pain are dedicated and have been training me that opioids aren’t as addictive as we
 15 thought. But what is that based on? It was based on nothing.”¹⁵⁵

16 295. At a hearing before the House of Representatives’ Subcommittee on Oversight
 17 and Investigations of the Committee on Energy and Commerce in August 2001, Purdue
 18 continued to emphasize “legitimate” treatment, dismissing cases of overdose and death as
 19 something that would not befall “legitimate” patients: “Virtually all of these reports involve
 20 people who are abusing the medication, not patients with legitimate medical needs under the
 21 treatment of a healthcare professional.”¹⁵⁶

22 296. Purdue spun this baseless “legitimate use” distinction out even further in a patient
 23 brochure about OxyContin, called “A Guide to Your New Pain Medicine and How to Become a

25 ¹⁵⁴ *Id.*

26 ¹⁵⁵ Quinones, *supra* note 75, at 188-89.

27 ¹⁵⁶ *Oxycontin: Its Use and Abuse: Hearing Before the H. Subcomm. on Oversight and Investigations of the Comm. on Energy and Commerce*, 107th Cong. 1 (Aug. 28, 2001) (statement of Michael Friedman, Executive Vice President, Chief Operating Officer, Purdue Pharma, L.P.), <https://www.gpo.gov/fdsys/pkg/CHRG-107hrg75754/pdf/CHRG-107hrg75754.pdf>.

1 Partner Against Pain.” In response to the question, “Aren’t opioid pain medications like
 2 OxyContin Tablets ‘addicting’? Even my family is concerned about this,” Purdue claimed that
 3 there was no need to worry about addiction if taking opioids for legitimate, “medical” purposes:

4 Drug addiction means using a drug to get “high” rather than to relieve pain. You
 5 are taking opioid pain medication for medical purposes. The medical purposes are
 6 clear and the effects are beneficial, not harmful.

7 297. Similarly, Dr. David Haddox, Senior Medical Director for Purdue, cavalierly
 8 stated, “[w]hen this medicine is used appropriately to treat pain under a doctor’s care, it is not
 9 only effective, it is safe.”¹⁵⁷ He went so far as to compare OxyContin to celery, because even
 10 celery would be harmful if injected: “If I gave you a stalk of celery and you ate that, it would be
 11 healthy for you. But if you put it in a blender and tried to shoot it into your veins, it would not be
 12 good.”¹⁵⁸

13 298. Purdue sales representatives also repeated these misstatements regarding the low
 14 risk for addiction to doctors across the country.¹⁵⁹ Its sales representatives targeted primary care
 15 physicians in particular, downplaying the risk of addiction and, as one doctor observed,
 16 “promot[ing] among primary care physicians a more liberal use of opioids.”¹⁶⁰

17 299. Purdue sales representatives were instructed to “distinguish between iatrogenic
 18 addiction (<1% of patients) and substance abusers/diversion (about 10% of the population abuse
 19 something: weed; cocaine; heroin; alcohol; valium; etc.).”¹⁶¹

20 300. Purdue also marketed OxyContin for a wide variety of conditions and to doctors
 21 who were not adequately trained in pain management.¹⁶²

22
 23
 24
 25¹⁵⁷ Roger Alford, *Deadly OxyContin abuse expected to spread in the U.S.*, Charleston Gazette, Feb. 9, 2001.

¹⁵⁸ *Id.*

26¹⁵⁹ Barry Meier, *In Guilty Plea, OxyContin Maker to Pay \$600 Million*, New York Times (May 10, 2007),
<http://www.nytimes.com/2007/05/10/business/11drug-web.html>.

27¹⁶⁰ Van Zee, *The Promotion and Marketing of OxyContin*, *supra* note 102.

¹⁶¹ Meier, *supra* note 15, at 269.

¹⁶² *OxyContin Abuse and Diversion and Efforts to Address the Problem*, *supra* note 36.

1 301. As of 2003, Purdue's Patient Information guide for OxyContin contained the
 2 following language regarding addiction:

3 Concerns about abuse, addiction, and diversion should not prevent the proper management of pain.
 4 The development of addiction to opioid analgesics in properly managed patients with pain has been
 5 reported to be rare. However, data are not available to establish the true incidence of addiction in
 chronic pain patients.

6

7 302. Although Purdue has acknowledged it has made some misrepresentations about
 8 the safety of its opioids,¹⁶³ it has done nothing to address the ongoing harms of their
 9 misrepresentations; in fact, it continues to make those misrepresentations today.

10 303. Defendant Endo also made dubious claims about the low risk of addiction. For
 11 instance, it sponsored a website, PainKnowledge.com, on which in 2009 it claimed that “[p]eople
 12 who take opioids as prescribed usually do not become addicted.”¹⁶⁴ The website has since been
 13 taken down.

14 304. In another website, PainAction.com—which is still currently available today—
 15 Endo also claimed that “most chronic pain patients do not become addicted to the opioid
 16 medications that are prescribed for them.”¹⁶⁵

17 305. In a pamphlet titled “Understanding Your Pain: Taking Oral Opioid Analgesics,”
 18 Endo assured patients that addiction is something that happens to people who take opioids for
 19 reasons other than pain relief, “such as unbearable emotional problems”¹⁶⁶:

20

21

22 ¹⁶³ Following the conviction in 2007 of three of its executives for misbranding OxyContin, Purdue released a
 23 statement in which they acknowledged their false statements. “Nearly six years and longer ago, some employees
 24 made, or told other employees to make, certain statements about OxyContin to some health care professionals that
 25 were inconsistent with the F.D.A.-approved prescribing information for OxyContin and the express warnings it
 26 contained about risks associated with the medicine. The statements also violated written company policies
 requiring adherence to the prescribing information.”

27 ¹⁶⁴ German Lopez, *The growing number of lawsuits against opioid companies, explained*, Vox (Feb. 27, 2018),
<https://www.vox.com/policy-and-politics/2017/6/7/15724054/opioid-companies-epidemic-lawsuits>.

28 ¹⁶⁵ *Opioid medication and addiction*, Pain Action (Aug. 17, 2017), <https://www.painaction.com/opioid-medication-addiction/>.

29 ¹⁶⁶ *Understanding Your Pain: Taking Oral Opioid Analgesics*, Endo Pharm. (2004),
http://www.thblack.com/links/RSD/Understand_Pain_Opioid_Analgesics.pdf.

1
2 Some questions you may have are:

3 *Is it wrong to take opioids for pain?*

- 4 ◆ No. Pain relief is an important medical
5 reason to take opioids as prescribed
6 by your doctor. Addicts take opioids
7 for other reasons, such as unbearable
emotional problems. Taking opioids as
prescribed for pain relief is not addiction.

8 *How can I be sure I'm not addicted?*

- 9 ◆ Addiction to an opioid would mean that
10 your pain has gone away but you still
take the medicine regularly when you
don't need it for pain, maybe just to
11 escape from your problems.
- 12 ◆ Ask yourself: Would I want to take this
13 medicine if my pain went away? If you
answer no, you are taking opioids for
the right reasons—to relieve your pain
and improve your function. You are not
14 addicted.

16 306. In addition, Endo made statements in pamphlets and publications that most health
17 care providers who treat people with pain agree that most people do not develop an addiction
18 problem. These statements also appeared on websites sponsored by Endo, such as Opana.com.

19 307. In its currently active website, PrescribeResponsibly.com, Defendant Janssen
20 states that concerns about opioid addiction are “overestimated” and that “true addiction occurs
21 only in a small percentage of patients.”¹⁶⁷

22
23
24
25
26 ¹⁶⁷ Keith Candiotti, M.D., *Use of Opioid Analgesics in Pain Management*, Prescribe Responsibly,
27 <https://web.archive.org/web/20190221055503/http://www.prescriberesponsibly.com/articles/opioid-pain-management> (last modified July 2, 2015).

1
2
3

Use of Opioid Analgesics in Pain Management



11 *Other Opioid Analgesic Concerns*

12 Aside from medical issues related to opioid analgesics, there are nonmedical
13 issues that may have an impact on prescribing patterns and patient use of
14 these drugs. Practitioners are often concerned about prescribing opioid
15 analgesics due to potential legal issues and questions of addiction.^{15,16} By
16 the same token, patients report similar concerns about developing an
17 addiction to opioid analgesics.¹⁷ While these concerns are not without some
18 merit, it would appear that they are often overestimated. According to clinical
19 opinion polls, true addiction occurs only in a small percentage of patients
20 with chronic pain who receive chronic opioid analgesics analgesic therapy.¹⁸



22 308. Similarly, in a 2009 patient education video titled “Finding Relief: Pain
23 Management for Older Adults,” Janssen sponsored a video by the American Academy of Pain
24 Medicine that indicated that opioids are rarely addictive. The video has since been taken
25 down.¹⁶⁸

26 309. Janssen also approved and distributed a patient education guide in 2009 that
27 attempted to counter the “myth” that opioids are addictive, claiming that “[m]any studies show
28 that opioids are rarely addictive when used properly for the management of chronic pain.”¹⁶⁹

¹⁶⁸ Molly Huff, *Finding Relief: Pain Management for Older Adults*, Ctrs. for Pain Mgmt. (Mar. 9, 2011), <http://www.managepaintoday.com/news/-Finding-Relief-Pain-Management-for-Older-Adults>.

¹⁶⁹ Lopez, *supra* note 164.

1 310. In addition, all the Marketing Defendants used third parties and front groups to
 2 further their false and misleading statements about the safety of opioids.

3 311. For example, in testimony for the Hearing to Examine the Effects of the Painkiller
 4 OxyContin, Focusing on Risks and Benefits, in front of the Senate Health, Education, Labor and
 5 Pensions Committee in February 2002, Dr. John D. Giglio, Executive Director of the APF, the
 6 organization which, as described above, received the majority of its funding from opioid
 7 manufacturers, including Purdue, stated that “opioids are safe and effective, and only in rare
 8 cases lead to addiction.”¹⁷⁰ Along with Dr. Giglio’s testimony, the APF submitted a short
 9 background sheet on “the scope of the undertreatment of pain in the U.S.,” which asserted that
 10 “opioids are often the best” treatment for pain that hasn’t responded to other techniques, but that
 11 patients and many doctors “lack even basic knowledge about these options and fear that powerful
 12 pain drugs will [c]ause addiction.” According to the APF, “most studies show that less than 1%
 13 of patients become addicted, which is medically different from becoming physically
 14 dependent.”¹⁷¹

15 312. The APF further backed up Purdue in an amicus curiae brief filed in an Ohio
 16 appeals court in December 2002, in which it claimed that “medical leaders have come to
 17 understand that the small risk of abuse does not justify the withholding of these highly effective
 18 analgesics from chronic pain patients.”¹⁷²

19 313. In a 2007 publication titled “Treatment Options: A Guide for People Living with
 20 Pain,” APF downplayed the risk of addiction and argued that concern about this risk should not
 21 prevent people from taking opioids: “Restricting access to the most effective medications for

22
 23
 24 ¹⁷⁰ *Oxycontin: Balancing Risks and Benefits: Hearing of the S. Comm. on Health, Education, Labor and Pensions*,
 25 107th Cong. 2 (Feb. 12, 2002) (testimony of John D. Giglio, M.A., J.D., Executive Director, American Pain
 Foundation), <https://www.help.senate.gov/imo/media/doc/Giglio.pdf>.

26 ¹⁷¹ *Id.*

27 ¹⁷² Brief Amici Curiae of American Pain Foundation, National Foundation for the Treatment of Pain, and The Ohio
 Pain Initiative, in Support of Defendants/Appellants, *Howland v. Purdue Pharma, L.P.*, Appeal No. CA 2002 09
 0220 (Butler Co., Ohio 12th Court of Appeals, Dec. 23, 2002), <https://ia801005.us.archive.org/23/items/279014-howland-apf-amicus/279014-howland-apf-amicus.pdf>.

1 treating pain is not the solution to drug abuse or addiction.”¹⁷³ APF also tried to normalize the
 2 dangers of opioids by listing opioids as one of several “[c]ommon drugs that can cause physical
 3 dependence,” including steroids, certain heart medications, and caffeine.¹⁷⁴

4 314. The Marketing Defendants’ repeated statements about the low risk of addiction
 5 when taking opioids as prescribed for chronic pain were blatantly false and were made with
 6 reckless disregard for the potential consequences.

7 **2. The Marketing Defendants falsely claimed that opioids were proven effective
 8 for chronic pain and would improve quality of life.**

9 315. Not only did the Marketing Defendants falsely claim that the risk of addiction to
 10 prescription opioids was low, these Defendants represented that there was a significant upside to
 11 long-term opioid use, including that opioids could restore function and improve quality of life.¹⁷⁵

12 316. Such claims were viewed as a critical part of the Marketing Defendants’
 13 marketing strategies. For example, an internal Purdue report from 2001 noted the lack of data
 14 supporting improvement in quality of life with OxyContin treatment:

15 Janssen has been stressing decreased side effects, especially constipation, as well
 16 as patient quality of life, as supported by patient rating compared to sustained
 17 release morphine...We do not have such data to support OxyContin promotion...In
 18 addition, Janssen has been using the “life uninterrupted” message in promotion of
 19 Duragesic for non-cancer pain, stressing that Duragesic “helps patients think less
 20 about their pain.” This is a competitive advantage based on our inability to make
 21 any quality of life claims.¹⁷⁶

22 317. Despite the lack of data supporting improvement in quality of life, Purdue ran a
 23 full-page ad for OxyContin in the Journal of the American Medical Association in 2002,
 24 proclaiming, “There Can Be Life With Relief,” and showing a man happily fly-fishing alongside
 25 his grandson.¹⁷⁷ This ad earned a warning letter from the FDA, which admonished, “It is

26 ¹⁷³ *Treatment Options: A Guide for People Living with Pain*, Am. Pain Found.,
 27 <https://assets.documentcloud.org/documents/277605/apf-treatmentoptions.pdf> (last visited Aug. 30, 2019).

¹⁷⁴ *Id.*

¹⁷⁵ This case *does not* request or require the Court to specifically adjudicate whether opioids are appropriate for the treatment of chronic, non-cancer pain—though the scientific evidence strongly suggests they are not.

¹⁷⁶ Meier, *supra* note 15, at 281.

¹⁷⁷ *Id.* at 280.

1 particularly disturbing that your November ad would tout ‘Life With Relief’ yet fail to warn that
 2 patients can die from taking OxyContin.”¹⁷⁸

3 318. Purdue also consistently tried to steer any concern away from addiction and focus
 4 on its false claims that opioids were effective and safe for treating chronic pain. At a hearing
 5 before the House of Representatives’ Subcommittee on Oversight and Investigations of the
 6 Committee on Energy and Commerce in August 2001, Michael Friedman, Executive Vice
 7 President and Chief Operating Officer of Purdue, testified that “even the most vocal critics of
 8 opioid therapy concede the value of OxyContin in the legitimate treatment of pain,” and that
 9 “OxyContin has proven itself an effective weapon in the fight against pain, returning many
 10 patients to their families, to their work, and to their ability to enjoy life.”¹⁷⁹

11 319. Purdue sponsored the development and distribution of an APF guide in 2011
 12 which claimed that “multiple clinical studies have shown that opioids are effective in improving
 13 daily function, psychological health, and health-related quality of life for chronic pain patients.”
 14 This guide is still available today.

15 320. Purdue also ran a series of advertisements of OxyContin in 2012 in medical
 16 journals titled “Pain vignettes,” which were styled as case studies of patients with persistent pain
 17 conditions and for whom OxyContin was recommended to improve their function.

18 321. Purdue and Endo also sponsored and distributed a book in 2007 to promote the
 19 claim that pain relief from opioids, by itself, improved patients’ function. The book remains for
 20 sale online today.

21 322. Endo’s advertisements for Opana ER claimed that use of the drug for chronic pain
 22 allowed patients to perform demanding tasks like construction and portrayed Opana ER users as
 23 healthy and unimpaired.

24 323. Endo’s National Initiative on Pain Control (NIPC) website also claimed in 2009
 25 that with opioids, “your level of function should improve; you may find you are now able to

26 ¹⁷⁸ Chris Adams, *FDA Orders Purdue Pharma To Pull Its OxyContin Ads*, Wall Street Journal (Jan. 23, 2003,
 12:01am), <https://www.wsj.com/articles/SB1043259665976915824>.

27 ¹⁷⁹ *Oxycontin: Its Use and Abuse*, *supra* note 156.

1 participate in activities of daily living, such as work and hobbies, that you were not able to enjoy
 2 when your pain was worse.”

3 324. Endo further sponsored a series of CME programs through NIPC which claimed
 4 that chronic opioid therapy has been “shown to reduce pain and depressive symptoms and
 5 cognitive functioning.”

6 325. Through PainKnowledge.org, Endo also supported and sponsored guidelines that
 7 stated, among other things, that “Opioid Medications are a powerful and often highly effective
 8 tool in treating pain,” and that “they can help restore comfort, function, and quality of life.”¹⁸⁰

9 326. In addition, Janssen sponsored and edited patient guides which stated that
 10 “opioids may make it easier for people to live normally.” The guides listed expected functional
 11 improvements from opioid use, including sleeping through the night, and returning to work,
 12 recreation, sex, walking, and climbing stairs.

13 327. Janssen also sponsored, funded, and edited a website which featured an interview
 14 edited by Janssen that described how opioids allowed a patient to “continue to function.” This
 15 video is still available today.

16 328. Furthermore, sales representatives for the Marketing Defendants communicated
 17 and continue to communicate the message that opioids will improve patients’ function, without
 18 appropriate disclaimers.

19 329. The Marketing Defendants’ statements regarding opioids’ ability to improve
 20 function and quality of life are false and misleading. As the CDC’s Guideline for Prescribing
 21 Opioids for Chronic Pain (the “2016 CDC Guideline” or “Guideline”)¹⁸¹ confirms, not a single
 22 study supports these claims.

23 330. In fact, to date, there have been no long-term studies that demonstrate that opioids
 24 are effective for treating long-term or chronic pain. Instead, reliable sources of information,

25
 26 ¹⁸⁰*Informed Consent for Using Opioids to Treat Pain*, Painknowledge.org (2007),
https://www.mainequalitycounts.org/image_upload/Opioid%20Informed%20Consent%20Formatted_1_23_2008.pdf.

27 ¹⁸¹ 2016 CDC Guideline, *supra* note 37.

1 including from the CDC in 2016, indicate that there is “[n]o evidence” to show “a long-term
 2 benefit of opioids in pain and function versus no opioids for chronic pain.”¹⁸² By contrast,
 3 significant research has demonstrated the colossal dangers of opioids. The CDC, for example,
 4 concluded that “[e]xtensive evidence shows the possible harms of opioids (including opioid use
 5 disorder, overdose, and motor vehicle injury)” and that “[o]pioid pain medication use presents
 6 serious risks, including overdose and opioid use disorder.”¹⁸³

7 **3. The Marketing Defendants falsely claimed doctors and patients could
 8 increase opioid usage indefinitely without added risk.**

9 331. The Marketing Defendants also made false and misleading statements claiming
 10 that there is no dosage ceiling for opioid treatment. These misrepresentations were integral to the
 11 Marketing Defendants’ promotion of prescription opioids for two reasons. First, the idea that
 12 there was no upward limit was necessary for the overarching deception that opioids are
 13 appropriate treatment for chronic pain. As discussed above, people develop a tolerance to
 14 opioids’ analgesic effects, so that achieving long-term pain relief requires constantly increasing
 15 the dose. Second, the dosing misrepresentation was necessary for the claim that OxyContin and
 16 competitor drugs allowed 12-hour dosing.

17 332. Twelve-hour dosing is a significant marketing advantage for any medication,
 18 because patient compliance is improved when a medication only needs to be taken twice a day.
 19 For prescription painkillers, the 12-hour dosing is even more significant because shorter-acting
 20 painkillers did not allow patients to get a full night’s sleep before the medication wore off. A
 21 Purdue memo to the OxyContin launch team stated that “OxyContin’s positioning statement is
 22 ‘all of the analgesic efficacy of immediate-release oxycodone, with convenient q12h dosing,’”
 23 and further that “[t]he convenience of q12h dosing was emphasized as the most important
 24 benefit.”¹⁸⁴

25
 26

¹⁸² *Id.*
 27

¹⁸³ *Id.*

¹⁸⁴ *OxyContin launch*, Los Angeles Times (May 5, 2016), <http://documents.latimes.com/oxycontin-launch-1995/>.

1 333. Purdue executives therefore maintained the messaging of 12-hour dosing even
 2 when many reports surfaced that OxyContin did not last 12 hours. Instead of acknowledging a
 3 need for more frequent dosing, Purdue instructed its representatives to push higher-strength pills.

4 334. For example, in a 1996 sales strategy memo from a Purdue regional manager, the
 5 manager emphasized that representatives should “convinc[e] the physician that there is no need”
 6 for prescribing OxyContin in shorter intervals than the recommended 12-hour interval, and
 7 instead the solution is prescribing higher doses. The manager directed representatives to discuss
 8 with physicians that there is “no[] upward limit” for dosing and ask “if there are any reservations
 9 in using a dose of 240mg-320mg of OxyContin.”¹⁸⁵

10 335. As doctors began prescribing OxyContin at shorter intervals in the late 1990s,
 11 Purdue directed its sales representatives to “refocus” physicians on 12-hour dosing. One sales
 12 manager instructed her team that anything shorter “needs to be nipped in the bud. NOW!!”¹⁸⁶

13 336. These misrepresentations were incredibly dangerous. As noted above, opioid
 14 dosages at or above 50 MME/day double the risk of overdose compared to 20 MME/day, and 50
 15 MME is equal to just 33 mg of oxycodone. Notwithstanding the risks, Purdue’s 2003 Conversion
 16 Guide for OxyContin contained the following diagram for increasing dosage up to 320 mg:

26

¹⁸⁵ *Sales manager on 12-hour dosing*, Los Angeles Times (May 5, 2016), <http://documents.latimes.com/sales-manager-on-12-hour-dosing-1996/>.

27 ¹⁸⁶ Harriet Ryan, Lisa Girion, and Scott Glover, ‘*You Want a Description of Hell?*’ OxyContin’s 12-Hour Problem, Los Angeles Times (May 5, 2016), <http://www.latimes.com/projects/oxycontin-part1/>.

1
2 **A Guide to Titration of OxyContin®**



12 337. In a 2004 response letter to the FDA, Purdue tried to address concerns that
 13 patients who took OxyContin more frequently than 12 hours would be at greater risk of side
 14 effects or adverse reactions. Purdue contended that the peak plasma concentrations of oxycodone
 15 would not increase with more frequent dosing, and therefore no adjustments to the package
 16 labeling or 12-hour dosing regimen were needed.¹⁸⁷ But these claims were false, and Purdue's
 17 suggestion that there was no upper limit or risk associated with increased dosage was incredibly
 18 misleading.

19 338. Suggesting that it recognized the danger of its misrepresentations of no dose
 20 ceiling, Purdue discontinued the OxyContin 160 mg tablet in 2007 and stated that this step was
 21 taken "to reduce the risk of overdose accompanying the abuse of this dosage strength."¹⁸⁸

22 339. But still Purdue and the Marketing Defendants worked hard to protect their story.
 23 In March 2007, Dr. Gary Franklin, Medical Director for the Washington State Department of
 24 Labor & Industries, published the *Interagency Guideline on Opioid Dosing for Chronic Non-*

25
 26¹⁸⁷ *Purdue Response to FDA, 2004*, Los Angeles Times (May 5, 2016), <http://documents.latimes.com/purdue-response-fda-2004/>.

27¹⁸⁸ *OxyContin Tablets Risk Management Program*, Purdue Pharma L.P., <https://web.archive.org/web/20170215064438/https://www.fda.gov/ohrms/dockets/DOCKETS/07p0232/07p-0232-cp00001-03-Exhibit-02-Part-1-vol1.pdf> (revised May 18, 2007).

1 *Cancer Pain.* Developed in collaboration with providers in Washington State who had extensive
 2 experience in the evaluation and treatment of patients with chronic pain, the guideline
 3 recommended a maximum daily dose of opioids to protect patients.

4 340. In response, Purdue sent correspondence to Dr. Franklin specifically indicating,
 5 among other things, that “limiting access to opioids for persons with chronic pain is not the
 6 answer” and that the “safety and efficacy of OxyContin doses greater than 40 mg every 12 hours
 7 in patients with chronic nonmalignant pain” was well established. Purdue even went so far as to
 8 represent to Dr. Franklin that even if opioid treatment produces significant adverse effects in a
 9 patient, “this does not preclude a trial of another opioid.”

10 341. In 2010, Purdue published a Risk Evaluation and Mitigation Strategy (“REMS”)
 11 for OxyContin, but even the REMS does not address concerns with increasing dosage, and
 12 instead advises prescribers that “dose adjustments may be made every 1-2 days”; “it is most
 13 appropriate to increase the q12h dose”; the “total daily dose can usually be increased by 25% to
 14 50%”; and if “significant adverse reactions occur, treat them aggressively until they are under
 15 control, then resume upward titration.”¹⁸⁹

16 342. In 2012, APF claimed on its website that there was no “ceiling dose” for opioids
 17 for chronic pain.¹⁹⁰ APF also made this claim in a guide sponsored by Purdue, which is still
 18 available online.

19 343. Accordingly, Purdue continued to represent both publicly and privately that
 20 increased opioid usage was safe and did not present additional risk at higher doses.

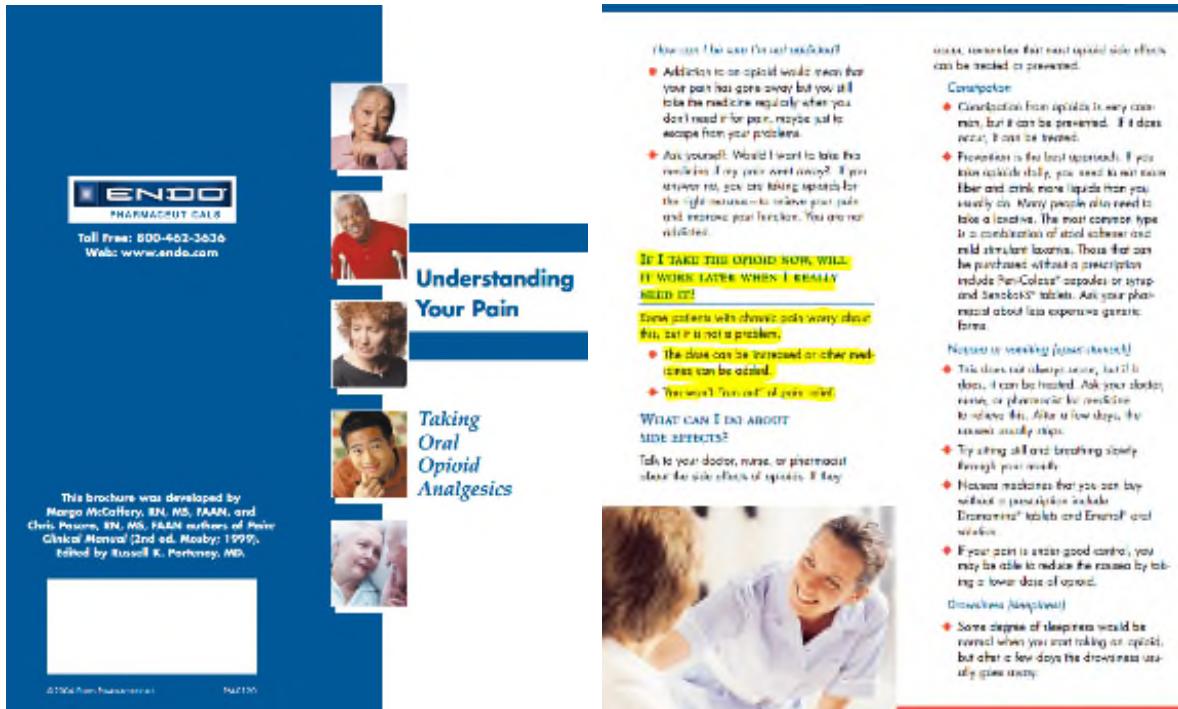
21 344. Janssen also made the same misrepresentations regarding the disadvantages of
 22 dosage limits for other pain medicines in a 2009 patient education guide, while failing to address
 23 the risks of dosage increases with opioids.

24
 25 ¹⁸⁹ *OxyContin Risk Evaluation and Mitigation Strategy*, Purdue Pharma L.P.,
 26 <https://web.archive.org/web/20170215190303/https://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM220990.pdf> (last modified Nov. 2010).

27 ¹⁹⁰ Noah Nadin, M.D., FAAFP, *Responsible Opioid Prescribing*, PCHC,
 28 https://www.mainequalitycounts.org/image_upload/Noah%20Nadin%20Slides_Responsible%20Opioid%20Prescribing%20MCPC2.pdf (last visited Aug. 30, 2019).

1 345. Endo, on a website it sponsors, PainKnowledge.com, also made the claim in 2009
 2 that opioid dosages could be increased indefinitely.

3 346. In the “Understanding Your Pain” pamphlet discussed above, Endo assures opioid
 4 users that concern about developing tolerance to the drugs’ pain-relieving effect is “not a
 5 problem,” and that “[t]he dose can be increased” and “[y]ou won’t ‘run out’ of pain relief.”¹⁹¹



18 347. Dosage limits with respect to opioids are particularly important not only because
 19 of the risk of addiction but also because of the potentially fatal side effect of respiratory
 20 depression. Endo’s “Understanding Your Pain” pamphlet minimized this serious side effect,
 21 calling it “slowed breathing,” declaring that it is “very rare” when opioids are used
 22 “appropriately,” and never stating that it could be fatal:

27 ¹⁹¹ *Understanding Your Pain: Taking Oral Opioid Analgesics*, *supra* note 166.

1 *"Slowed breathing"*

- 2 ◆ The medical term for "slowed breathing"
 3 is "respiratory depression."
- 4 ◆ This is very rare when oral opioids are
 5 used appropriately for pain relief.
- 6 ◆ If you become so sleepy that you cannot
 7 make yourself stay awake, you may be
 8 in danger of slowed breathing. Stop
 9 taking your opioid and call your doctor
 10 immediately.

11 **4. The Marketing Defendants falsely instructed doctors and patients that more
 12 opioids were the solution when patients presented symptoms of addiction.**

13 348. Not only did the Marketing Defendants hide the serious risks of addiction

14 associated with opioids, they actively worked to prevent doctors from taking steps to prevent or
 15 address opioid addiction in their patients.

16 349. One way that the Marketing Defendants worked to obstruct appropriate responses
 17 to opioid addiction was to push the concept of "pseudoaddiction." Dr. David Haddox—who later
 18 became a Senior Medical Director for Purdue—published a study in 1989 coining the term,
 19 which he characterized as "the iatrogenic syndrome of abnormal behavior developing as a direct
 20 consequence of inadequate pain management."¹⁹² ("Iatrogenic" describes a condition induced by
 21 medical treatment.) In other words, he claimed that people on prescription opioids who exhibited
 22 classic signs of addiction—"abnormal behavior"—were not addicted, but rather simply suffering
 23 from under-treatment of their pain. His solution for pseudoaddiction? More opioids.

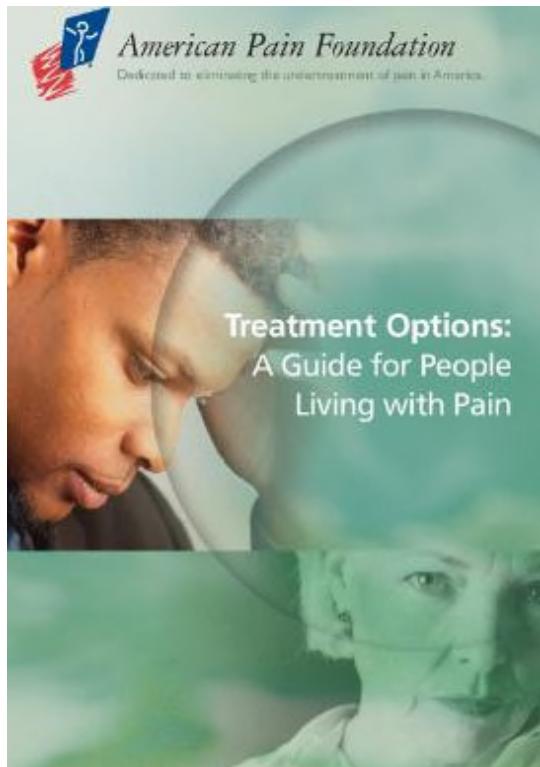
24 350. Although this concept was formed based on a single case study, it proved to be a
 25 favorite trope in the Marketing Defendants' marketing schemes. For example, using this study,
 26 Purdue informed doctors and patients that signs of addiction are actually the signs of under-
 27 treated pain which should be treated with even more opioids. Purdue reassured doctors and
 28 patients, telling them that "chronic pain has been historically undertreated."¹⁹³

¹⁹² David E. Weissman and J. David Haddox, *Opioid pseudoaddiction--an iatrogenic syndrome*, 36(3) Pain 363-66 (Mar. 1989), <https://www.ncbi.nlm.nih.gov/pubmed/2710565>.

¹⁹³ *Oxycontin: Its Use and Abuse*, *supra* note 156.

1 351. The Marketing Defendants continued to spread the concept of pseudoaddiction
 2 through the APF, which even went so far as to compare opioid addicts to coffee drinkers. In a
 3 2002 court filing, APF wrote that “[m]any pain patients (like daily coffee drinkers) claim they
 4 are ‘addicted’ when they experience withdrawal symptoms associated with physical dependence
 5 as they decrease their dose. But unlike actual addicts, such individuals, if they resume their
 6 opioid use, will only take enough medication to alleviate their pain . . .”¹⁹⁴

7 352. In a 2007 publication titled “Treatment Options: A Guide for People Living with
 8 Pain,” the APF claimed: “Physical dependence is normal; any patient who is taking an opioid on
 9 a regular basis for a few days should be assumed to be physically dependent. This does NOT
 10 mean you are addicted.”¹⁹⁵ In this same publication, the APF asserted that “people who are not
 11 substance abusers” may also engage in “unacceptable” behaviors such as “increasing the dose
 12 without permission or obtaining the opioid from multiple sources,” but that such behaviors do
 13 not indicate addiction and instead reflect a “desire to obtain pain relief.”¹⁹⁶



Side effects
 The most common side effects of opioids include constipation, nausea and vomiting, drowsiness (sleepiness), mental clouding and dizziness. Some people may also experience diarrhea or difficulty urinating. Respiratory depression, a decreased rate and depth of breathing, is a serious side effect associated with opioid use.

The good news is that most side effects go away after a few days. However, side effects may continue in some people. Constipation is most likely to persist. Some pain experts believe all patients treated on an opioid also should be taking a stool softener or a laxative. Others believe that this treatment is appropriate only if a patient is prone to developing significant constipation because of advanced age, poor diet, other diseases, or the use of other constipating drugs. Your healthcare provider can give advice on what to eat and what medicines to use to treat constipation. Always make certain to drink plenty of fluids and be as active as possible.

If any of the other side effects don't go away, they can also be treated. Be certain to tell your provider if you are having any problems. Serious side effects such as delirium or respiratory depression can occur if the dose is increased too quickly, especially in someone who is just starting to take opioids. Tell your provider if you are unable to concentrate or think clearly after you have been taking an opioid for a few days. Report other medications you may be taking that make you sleepy. Do not drive when you first start taking these drugs or immediately after the dose has been increased. Most persons will adjust to these medicines over time and can drive safely while taking them for pain control. If side effects remain troublesome, your provider may switch you to a different opioid. The amount of pain relief can be maintained after such a switch and often the side effects can be reduced.

Common drugs that can cause physical dependence

- Opioids
- Stimulants
- Sedatives
- Steroids
- Certain Antidepressants
- Certain Heart Medications
- Caffeine

Tolerance, physical dependence and addiction

You and your healthcare provider may worry about tolerance, physical dependence and addiction. It's sometimes easy to confuse the meaning of these words. Tolerance refers to the situation in which a drug becomes less effective over time. However, many persons with persistent pain don't develop tolerance and stay on the same dose of opioid for a long time. Many times when a person needs a larger dose of a drug, it's because their pain is worse or the problem causing their pain has changed.

Physical dependence means that a person will develop symptoms and signs of withdrawal (e.g., sweating, rapid heart rate, nausea, diarrhea, goosebumps, anxiety) if the drug is suddenly stopped or the dose is lowered too quickly. Physical dependence is normal. Any patient who is taking an opioid on a regular basis for a few days should be assumed to be physically dependent. This does NOT mean you are addicted. In fact, many non-addictive drugs can produce physical dependence. To prevent withdrawal occurring, the dose of the medication must be decreased slowly.

If you believe that you no longer need to take the opioid medication or want to reduce the dose, it is essential to speak to your provider. They will guide you on how to decrease your dose over time to prevent the experience of withdrawal.

194 APF Brief Amici Curiae, *supra* note 172 at 10-11.

195 *Treatment Options: A Guide for People Living with Pain*, *supra* note 173.

196 *Id.*

1 353. Purdue published a REMS for OxyContin in 2010, and in the associated
 2 Healthcare Provider Training Guide stated that “[b]ehaviors that suggest drug abuse exist on a
 3 continuum, and pain-relief seeking behavior can be mistaken for drug-seeking behavior.”¹⁹⁷

4 354. Purdue worked, and continues to work, to create confusion about what addiction
 5 is. For example, Purdue continues to emphasize that abuse and addiction are separate and distinct
 6 from physical dependence. Regardless of whether these statements may be technically correct,
 7 they continue to add ambiguity over the risks and benefits of opioids.

8 355. Endo sponsored an NIPC CME program in 2009 which promoted the concept of
 9 pseudoaddiction by teaching that a patient’s aberrant behavior was the result of untreated pain.
 10 Endo substantially controlled NIPC by funding its projects, developing content, and reviewing
 11 NIPC materials.

12 356. A 2001 paper which was authored by a doctor affiliated with Janssen stated that
 13 “[m]any patients presenting to a doctor’s office asking for pain medications are accused of drug
 14 seeking. In reality, most of these patients may be undertreated for their pain syndrome.”¹⁹⁸

15 357. In 2009, on a website it sponsored, Janssen stated that pseudoaddiction is different
 16 from true addiction “because such behaviors can be resolved with effective pain
 17 management.”¹⁹⁹

18 358. Indeed, on its currently active website PrescribeResponsibly.com, Janssen defines
 19 pseudoaddiction as “a syndrome that causes patients to seek additional medications due to
 20 inadequate pharmacotherapy being prescribed. Typically, when the pain is treated appropriately,
 21 the inappropriate behavior ceases.”²⁰⁰

22 ¹⁹⁷ *OxyContin Risk Evaluation and Mitigation Strategy*, *supra* note 189.

23 ¹⁹⁸ Howard A. Heit, MD, FACP, FASAM, *The truth about pain management: the difference between a pain patient*
 24 *and an addicted patient*, 5 European Journal of Pain 27-29 (2001),
<http://www.med.uottawa.ca/courses/totalpain/pdf/doc-34.pdf>.

25 ¹⁹⁹ Chris Morran, *Ohio: Makers Of OxyContin, Percocet & Other Opioids Helped Fuel Drug Epidemic By*
 26 *Misleading Doctors, Patients*, Consumerist (May 31, 2017, 2:05pm), <https://consumerist.com/2017/05/31/ohio-makers-of-oxycontin-percocet-other-opioids-helped-fuel-drug-epidemic-by-misleading-doctors-patients/>.

27 ²⁰⁰ Howard A. Heit, MD, FACP, FASAM and Douglas L. Gourlay, MD, MSc, FRCPC, FASAM, *What a Prescriber*
 28 *Should Know Before Writing the First Prescription*, Prescribe Responsibly,
<https://web.archive.org/web/20190106014101/http://www.prescriberesponsibly.com/articles/before-prescribing-opioids> (last modified July 2, 2015).

What a Prescriber Should Know Before Writing the First Prescription

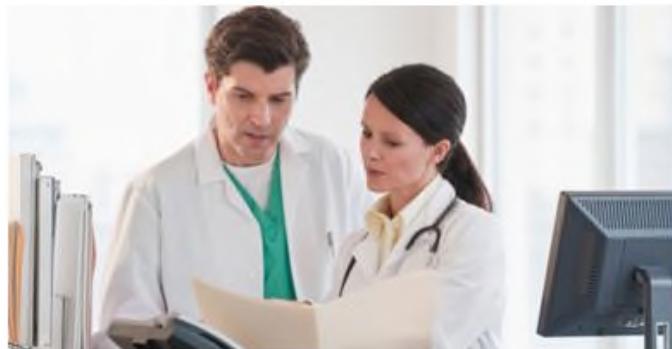


TABLE 1: Definitions

8. **Pseudoaddiction** is a syndrome that causes patients to seek additional medications due to inadequate pharmacotherapy being prescribed. Typically when the pain is treated appropriately, the inappropriate behavior ceases.²⁵



359. As set forth in more detail below, these statements were false and misleading as evidenced by, *inter alia*, the findings made by the CDC in 2016. Indeed, there is simply no evidence that pseudoaddiction is a real phenomenon. As research compiled by the CDC and others makes clear, pseudoaddiction is pseudoscience—nothing more than a concept Defendants seized upon to help sell more of their actually addictive drugs.

5. The Marketing Defendants falsely claimed that risk-mitigation strategies, including tapering and abuse-deterrant technologies, made it safe to prescribe opioids for chronic use.

360. Even when the Marketing Defendants acknowledge that opioids pose some risk of addiction, they dismiss these concerns by claiming that addiction can be easily avoided and addressed through simple steps. In order to make prescribers feel more comfortable about starting patients on opioids, the Marketing Defendants falsely communicated to doctors that certain screening tools would allow them to reliably identify patients at higher risk of addiction

1 and safely prescribe opioids, and that tapering the dose would be sufficient to manage cessation
 2 of opioid treatment. Both assertions are false.

3 361. For instance, as noted above, Purdue published a REMS for OxyContin in 2010,
 4 in which it described certain steps that needed to be followed for safe opioid use. Purdue stressed
 5 that all patients should be screened for their risk of abuse or addiction, and that such screening
 6 could curb the incidence of addiction.²⁰¹

7 362. The APF also proclaimed in a 2007 booklet, sponsored in part by Purdue, that
 8 “[p]eople with the disease of addiction may abuse their medications, engaging in unacceptable
 9 behaviors like increasing the dose without permission or obtaining the opioid from multiple
 10 sources, among other things. Opioids get into the hands of drug dealers and persons with an
 11 addictive disease as a result of pharmacy theft, forged prescriptions, Internet sales, and even
 12 from other people with pain. It is a problem in our society that needs to be addressed through
 13 many different approaches.”²⁰²

14 363. On its current website for OxyContin,²⁰³ Purdue acknowledges that certain
 15 patients have higher risk of opioid addiction based on history of substance abuse or mental
 16 illness—a statement which, even if accurate, obscures the significant risk of addiction for all
 17 patients, including those without such a history, and comports with statements it has recently
 18 made that it is “bad apple” patients, and not the opioids, that are arguably the source of the
 19 opioid crisis:

20
 21
 22
 23
 24
 25

26 ²⁰¹ *Oxycontin Risk Evaluation and Mitigation Strategy*, *supra* note 189.

27 ²⁰² *Treatment Options: A Guide for People Living with Pain*, *supra* note 173.

28 ²⁰³ OxyContin, <https://www.oxycontin.com/index.html> (last visited Aug. 30, 2019).

1
2 Assess each patient's risk for opioid addiction, abuse, or misuse prior to prescribing
3 OxyContin, and monitor all patients receiving OxyContin for the development of these
4 behaviors and conditions. Risks are increased in patients with a personal or family
5 history of substance abuse (including drug or alcohol abuse or addiction) or mental
6 illness (e.g., major depression). The potential for these risks should not, however,
7 prevent the proper management of pain in any given patient. Patients at increased risk
may be prescribed opioids such as OxyContin, but use in such patients necessitates
intensive counseling about the risks and proper use of OxyContin along with intensive
monitoring for signs of addiction, abuse, and misuse.

8 364. Additionally, on its current website, Purdue refers to publicly available tools that
9 can assist with prescribing compliance, such as patient-prescriber agreements and risk
10 assessments.²⁰⁴

11 365. Purdue continues to downplay the severity of addiction and withdrawal and
12 claims that dependence can easily be overcome by strategies such as adhering to a tapering
13 schedule to successfully stop opioid treatment. On the current website for OxyContin, it instructs
14 that “[w]hen discontinuing OxyContin, gradually taper the dosage. Do not abruptly discontinue
15 OxyContin.”²⁰⁵ And on the current OxyContin Medication Guide, Purdue also states that one
16 should “taper the dosage gradually.”²⁰⁶ As a general matter, tapering is a sensible strategy for
17 cessation of treatment with a variety of medications, such as steroids or antidepressants. But the
18 suggestion that tapering is sufficient, or simple, following chronic and continuous opioid use is
19 misleading and dangerous, and it sets patients up for withdrawal and addiction.

20 366. In its “Dear Healthcare Professional” letter in 2010, Purdue instructed doctors to
21 gradually taper someone off OxyContin to prevent signs and symptoms of withdrawal in patients
22 who were physically dependent.²⁰⁷ Nowhere does Purdue warn doctors or patients that tapering
23 may be inadequate to safely end opioid treatment and avoid addiction.

24
25²⁰⁴ *ER/LA Opioid Analgesics REMS*, Purdue, <http://www.purduepharma.com/healthcare-professionals/responsible-use-of-opioids/remis/> (last visited Mar. 7, 2019).

26²⁰⁵ Oxycontin.com, *supra* note 203.

27²⁰⁶ *OxyContin Full Prescribing Information*, Purdue Pharma LP, <http://app.purduepharma.com/xmlpublishing/pi.aspx?id=0> (last visited Aug. 30, 2019).

²⁰⁷ *OxyContin Risk Evaluation and Mitigation Strategy*, *supra* note 189.

1 367. Other Marketing Defendants make similar claims. For instance, Endo suggests
 2 that risk-mitigation strategies enable the safe prescription of opioids. In its currently active
 3 website, Opana.com, Endo states that assessment tools should be used to assess addiction risk,
 4 but that “[t]he potential for these risks should not, however, prevent proper management of pain
 5 in any given patient.”²⁰⁸

6 368. On the same website, Endo makes similar statements about tapering, stating
 7 “[w]hen discontinuing OPANA ER, gradually taper the dosage.”²⁰⁹

8 369. Janssen also states on its currently active website, PrescribeResponsibly.com, that
 9 the risk of opioid addiction “can usually be managed” through tools such as “opioid agreements”
 10 between patients and doctors.²¹⁰

11 370. Each Marketing Defendant’s statements about tapering misleadingly implied that
 12 gradual tapering would be sufficient to alleviate any risk of withdrawal or addiction while taking
 13 opioids.

14 371. The Marketing Defendants have also made and continue to make false and
 15 misleading statements about the purported abuse-deterrent properties of their opioid pills to
 16 suggest these reformulated pills are not susceptible to abuse. In so doing, the Marketing
 17 Defendants have increased their profits by selling more pills for substantially higher prices.

18 372. For instance, since at least 2001, Purdue has contended that “abuse resistant
 19 products can reduce the incidence of abuse.”²¹¹ Until recently, Purdue’s website touted abuse-
 20 deterrent properties by saying they “can make a difference.”²¹²

21 373. On August 17, 2015, Purdue announced the launch of a new website, “Team
 22 Against Opioid Abuse,” which it said was “designed to help healthcare professionals and

24 ²⁰⁸ Opana ER, Endo Pharmaceuticals, Inc., <http://www.opana.com> (last visited Aug. 30, 2019).

25 ²⁰⁹ *Id.*

26 ²¹⁰ Heit & Gourlay, *supra* note 200.

27 ²¹¹ *Oxycontin: Its Use and Abuse*, *supra* note 156.

26 ²¹² *Opioids with Abuse-Deterrent Properties*, Purdue, <http://www.purduepharma.com/healthcare-professionals/responsible-use-of-opioids/opioids-with-abuse-deterrent-properties/> (last visited May 16, 2018); *see also* <https://web.archive.org/web/20180302203422/http://www.purduepharma.com/healthcare-professionals/responsible-use-of-opioids/opioids-with-abuse-deterrent-properties/>.

1 laypeople alike learn about different abuse-deterrent technologies and how they can help in the
 2 reduction of misuse and abuse of opioids.”²¹³ This website appears to no longer be active.

3 374. A 2013 study which was authored by at least two doctors who at one time
 4 worked for Purdue stated that “[a]buse-deterrent formulations of opioid analgesics can reduce
 5 abuse.”²¹⁴ In another study from 2016 with at least one Purdue doctor as an author, the authors
 6 claimed that abuse decreased by as much as 99% in some situations after abuse-deterrent
 7 formulations were introduced.²¹⁵

8 375. Interestingly, one report found that the original safety label for OxyContin, which
 9 instructed patients not to crush the tablets because it would have a rapid release effect, may have
 10 inadvertently given opioid users ideas for techniques to get high from these drugs.²¹⁶

11 376. In 2012, Defendant Endo replaced the formula for Opana ER with a new formula
 12 with abuse-deterrent properties that it claimed would make Opana ER resistant to manipulation
 13 from users to snort or inject it. But the following year, the FDA concluded:

14 While there is an increased ability of the reformulated version of Opana ER to resist
 15 crushing relative to the original formulation, study data show that the reformulated
 16 version’s extended-release features can be compromised when subjected to other
 17 forms of manipulation, such as cutting, grinding, or chewing, followed by
 18 swallowing.

19 Reformulated Opana ER can be readily prepared for injection, despite Endo’s claim
 20 that these tablets have “resistance to aqueous extraction (i.e., poor syringeability).”
 21 It also appears that reformulated Opana ER can be prepared for snorting using
 22 commonly available tools and methods.

22 ²¹³*Purdue Pharma L.P. Launches TeamAgainstOpioidAbuse.com*, Purdue (Aug. 17, 2015),
<https://web.archive.org/web/20170404120618/http://www.purduepharma.com/news-media/2015/08/purdue-pharma-l-p-launches-teamagainstopioidabuse-com/>.

23 ²¹⁴ Paul M. Coplan, Hrishikesh Kale, Lauren Sandstrom, Craig Landau, and Howard D. Chilcoat, *Changes in*
oxycodone and heroin exposures in the National Poison Data System after introduction of extended-release
oxycodone with abuse-deterrent characteristics, 22 (12) *Pharmacoepidemiol Drug Saf.* 1274-82 (Sept. 30, 2013),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4283730/>.

24 ²¹⁵ Paul M. Coplan, Howard D. Chilcoat, Stephen Butler, Edward M. Sellers, Aditi Kadakia, Venkatesh
 25 Harikrishnan, J. David Haddox, and Richard C. Dart, *The effect of an abuse-deterrent opioid formulation*
(OxyContin) on opioid abuse-related outcomes in the postmarketing setting, 100 *Clin. Pharmacol. Ther.*, 275-86
 26 (June 22, 2016), <http://onlinelibrary.wiley.com/doi/10.1002/cpt.390/full>.

27 ²¹⁶ *OxyContin Abuse and Diversion and Efforts to Address the Problem*, *supra* note 36.

1 The postmarketing investigations are inconclusive, and even if one were to treat
 2 available data as a reliable indicator of abuse rates, one of these investigations also
 3 suggests the troubling possibility that a higher percentage of reformulated Opana
 4 ER abuse is via injection than was the case with the original formulation.²¹⁷

5 377. Despite the FDA's determination that the evidence did not support Endo's claims
 6 of abuse-deterrance, Endo advertised its reformulated pills as "crush resistant" and directed its
 7 sales representatives to represent the same to doctors. Endo improperly marketed Opana ER as
 8 crush-resistant, when Endo's own studies showed that the pill could be crushed and ground. In
 9 2016, Endo reached an agreement with the Attorney General of the State of New York that
 10 required Endo to discontinue making such statements.²¹⁸

11 378. Mallinckrodt likewise promoted its branded opioids, Exalgo and Xartemis XR, as
 12 having abuse-deterrant properties, even though the FDA did not approve ADF labeling for either
 13 drug. For both Exalgo and Xartemis XR, Mallinckrodt trained its sales representatives to tell
 14 doctors that the pills were tamper-resistant in that they were harder to crush and to inject, and
 15 that the drugs were less likely to provide euphoria to users. Mallinckrodt pushed its branded
 16 products as solutions to rampant opioid abuse while continuing to profit from the high rate of
 17 abuse of its generics.

18 379. The Marketing Defendants' assertions that their reformulated pills could curb
 19 abuse and that other risk-mitigation strategies enabled doctors to safely prescribe high doses of
 20 long-acting opioids were false and misleading.

21 380. Ultimately, even if a physician prescribes opioids after screening for abuse risk,
 22 advising a patient to taper, and selecting brand-name, abuse-deterrant formulations, chronic and
 23 continuous opioid use still comes with significant risks of addiction and abuse. The Marketing

25 ²¹⁷ *FDA Statement: Original Opana ER Relisting Determination*, U.S. Food & Drug Admin. (May 10, 2013),
<https://wayback.archive-it.org/7993/20171102214123/https://www.fda.gov/Drugs/DrugSafety/ucm351357.htm>.

26 ²¹⁸ Press Release, Attorney General Eric T. Schneiderman, *A.G. Schneiderman Announces Settlement with Endo*
Health Solutions Inc. & Endo Pharmaceuticals Inc. Over Marketing of Prescription Opioid Drugs (Mar. 3, 2016),
<https://ag.ny.gov/press-release/ag-schneiderman-announces-settlement-endo-health-solutions-inc-endo-pharmaceuticals>.

1 Defendants' statements to the contrary were designed to create a false sense of security and
 2 assure physicians that they could safely prescribe potent narcotics to their patients.

3 **F. Research Demonstrates that the Manufacturing Defendants' Claims are False.**

4 381. Contrary to the Manufacturing Defendants' misrepresentations about the benefits
 5 and risks of opioids, growing evidence suggests that using opioids to treat chronic pain leads to
 6 overall negative outcomes, delaying or preventing recovery and providing little actual relief, all
 7 while presenting serious risks of overdose.

8 382. For example, Dr. Gary Franklin, Medical Director of the Washington State
 9 Department of Labor and Industries ("L&I"), together with its chief pharmacist, Jaymie Mai,
 10 conducted a thorough analysis of all recorded deaths in the state's workers' comp system. They
 11 published their findings in the *American Journal of Industrial Medicine* in 2005 and again in
 12 2012.²¹⁹

13 383. Their research showed that the total number of opioid prescriptions paid for by
 14 the Workers' Compensation Program tripled between 1996 and 2006.²²⁰ Not only did the number
 15 of prescriptions balloon, so too did the doses; from 1996 to 2002 the mean daily morphine
 16 equivalent dose ("MED") nearly doubled, and remained that way through 2006.²²¹ As injured
 17 workers were given more prescriptions of higher doses of opioids, the rates of opioid overdoses
 18 among that population jumped, from zero in 1996 to more than twenty in 2005. And in 2009,
 19 over thirty people receiving opioid prescriptions through the workers' compensation program
 20 died of an opioid overdose.²²²

21 384. Additional research from L&I demonstrates that the use of opioids to treat pain
 22 after an injury actually prevents or slows a patient's recovery. In a study of employees who had

23²¹⁹ Gary M. Franklin, M.D., MPH, Jaymie Mai, Pharm.D., Thomas Wickizer, Ph.D., Judith A. Turner, Ph.D.,
 24 Deborah Fulton-Kehoe, Ph.D., MPH, and Linda Grant, BSN, MBA, *Opioid dosing trends and mortality in*
Washington State Workers' Compensation, 1996-2002, 48 Am J Ind Med 91-99 (2005).

25²²⁰ Gary M. Franklin, M.D., MPH, Jaymie Mai, Pharm.D., Thomas Wickizer, Ph.D., Judith Turner, Ph.D., Mark
 26 Sullivan, M.D., Ph.D., Thomas Wickizer, Ph.D., and Deborah Fulton-Kehoe, Ph.D., *Bending the Prescription*
Opioid Dosing and Mortality Curves: Impact of the Washington State Opioid Dosing Guideline, 55 Am J Ind Med
 325, 327 (2012).

27²²¹ *Id.* at 327-28.

²²² *Id.* at 328.

1 suffered a low back injury on the job, Dr. Franklin determined that among those who were
 2 prescribed opioids soon after the injury, employees who were given high doses of opioids, or for
 3 periods of more than a week, were far more likely to experience negative health outcomes than
 4 the employees who were given smaller doses or for a shorter term.

5 385. Specifically, the study showed that, after adjusting for the baseline covariates,
 6 injured workers who received a prescription opioid for more than seven days during the first six
 7 weeks after the injury were 2.2 times more likely to remain disabled a year later than workers
 8 with similar injuries who received no opioids at all. Similarly, those who received two
 9 prescriptions of opioids for the injury were 1.8 times more likely to remain disabled a year after
 10 their injury than workers who received no opioids at all, and those receiving daily doses higher
 11 than 150 MED were more than twice as likely to be on disability a year later, compared to
 12 workers who received no opioids.²²³

13 386. In sum, not only do prescription opioids present significant risks of addiction and
 14 overdose, but they also hinder patient recovery after an injury. This dynamic presents problems
 15 for employers, too, who bear significant costs when their employees do not recover quickly from
 16 workplace injuries. Employers are left without their labor force and may be responsible for
 17 paying for the injured employee's disability for long periods of time.

18 **G. The 2016 CDC Guideline and Other Recent Analyses Confirm That the Marketing
 19 Defendants' Statements About the Risks and Benefits of Opioids Are Patently False.**

20 387. Contrary to the statements made by the Marketing Defendants in their well-
 21 orchestrated campaign to tout the benefits of opioids and downplay their risks, recent studies
 22 confirm the Marketing Defendants' statements were false and misleading.

23 388. The CDC issued its *Guideline for Prescribing Opioids for Chronic Pain* on March
 24 15, 2016.²²⁴ The 2016 CDC Guideline, approved by the FDA, "provides recommendations for

25 223 Franklin, GM, Stover, BD, Turner, JA, Fulton-Kehoe, D, Wickizer, TM, *Early opioid prescription and*
 26 *subsequent disability among workers with back injuries: the Disability Risk Identification Study Cohort*, 33 Spine
 199, 201-202.

27 224 2016 CDC Guideline, *supra* note 37.

1 primary care clinicians who are prescribing opioids for chronic pain outside of active cancer
 2 treatment, palliative care, and end-of-life care.” The Guideline also assesses the risks and harms
 3 associated with opioid use.

4 389. The 2016 CDC Guideline is the result of a thorough and extensive process by the
 5 CDC. The CDC issued the Guideline after it “obtained input from experts, stakeholders, the
 6 public, peer reviewers, and a federally chartered advisory committee.” The recommendations in
 7 the 2016 CDC Guideline were further made “on the basis of a systematic review of the best
 8 available evidence . . .”

9 390. The CDC went through an extensive and detailed process to solicit expert
 10 opinions for the Guideline:

11 CDC sought the input of experts to assist in reviewing the evidence and providing
 12 perspective on how CDC used the evidence to develop the draft recommendations.
 13 These experts, referred to as the “Core Expert Group” (CEG) included subject
 14 matter experts, representatives of primary care professional societies and state
 15 agencies, and an expert in guideline development methodology. CDC identified
 16 subject matter experts with high scientific standing; appropriate academic and
 17 clinical training and relevant clinical experience; and proven scientific excellence
 18 in opioid prescribing, substance use disorder treatment, and pain management.
 19 CDC identified representatives from leading primary care professional
 20 organizations to represent the audience for this guideline. Finally, CDC identified
 21 state agency officials and representatives based on their experience with state
 22 guidelines for opioid prescribing that were developed with multiple agency
 23 stakeholders and informed by scientific literature and existing evidence-based
 24 guidelines.

25 391. The 2016 Guideline was also peer-reviewed pursuant to “the final information
 26 quality bulletin for peer review.” Specifically, the Guideline describes the following independent
 27 peer-review process:

28 [P]eer review requirements applied to this guideline because it provides influential
 29 scientific information that could have a clear and substantial impact on public- and
 30 private-sector decisions. Three experts independently reviewed the guideline to
 31 determine the reasonableness and strength of recommendations; the clarity with
 32 which scientific uncertainties were clearly identified; and the rationale, importance,
 33 clarity, and ease of implementation of the recommendations. CDC selected peer
 34 reviewers based on expertise, diversity of scientific viewpoints, and independence
 35 from the guideline development process. CDC assessed and managed potential

1 conflicts of interest using a process similar to the one as described for solicitation
 2 of expert opinion. No financial interests were identified in the disclosure and review
 3 process, and nonfinancial activities were determined to be of minimal risk; thus, no
 significant conflict of interest concerns were identified.

4 392. The findings in the 2016 CDC Guideline both confirmed the existing body of
 5 scientific evidence regarding the questionable efficacy of opioid use and contradicted
 6 Defendants' statements about opioids.

7 393. For instance, the Guideline states “[e]xtensive evidence shows the possible harms
 8 of opioids (including opioid use disorder, overdose, and motor vehicle injury)” and that “[o]pioid
 9 pain medication use presents serious risks, including overdose and opioid use disorder.” The
 10 Guideline further confirms there are significant symptoms related to opioid withdrawal,
 11 including drug cravings, anxiety, insomnia, abdominal pain, vomiting, diarrhea, sweating,
 12 tremor, tachycardia (rapid heartbeat), spontaneous abortion and premature labor in pregnant
 13 women, and the unmasking of anxiety, depression, and addiction. These findings contradict
 14 statements made by Defendants regarding the minimal risks associated with opioid use,
 15 including that the risk of addiction from chronic opioid use is low.

16 394. The Guideline also concludes that there is “[n]o evidence” to show “a long-term
 17 benefit of opioids in pain and function versus no opioids for chronic pain . . .” Furthermore, the
 18 Guideline indicates that “continuing opioid therapy for 3 months substantially increases the risk
 19 of opioid use disorder.” Indeed, the Guideline indicates that “[p]atients who do not experience
 20 clinically meaningful pain relief early in treatment . . . are unlikely to experience pain relief with
 21 longer-term use,” and that physicians should “reassess[] pain and function within 1 month” in
 22 order to decide whether to “minimize risks of long-term opioid use by discontinuing opioids”
 23 because the patient is “not receiving a clear benefit.” These findings flatly contradict claims
 24 made by the Defendants that there are minimal or no adverse effects of long-term opioid use, or
 25 that long-term opioid use could actually improve or restore a patient’s function.

26 395. In support of these statements about the lack of long-term benefits of opioid use,
 27 the CDC concluded that “[a]lthough opioids can reduce pain during short-term use, the clinical

1 evidence review found insufficient evidence to determine whether pain relief is sustained and
 2 whether function or quality of life improves with long-term opioid therapy.” The CDC further
 3 found that “evidence is limited or insufficient for improved pain or function with long-term use
 4 of opioids for several chronic pain conditions for which opioids are commonly prescribed, such
 5 as low back pain, headache, and fibromyalgia.”

6 396. With respect to opioid dosing, the Guideline reports that “[b]enefits of high-dose
 7 opioids for chronic pain are not established” while the “risks for serious harms related to opioid
 8 therapy increase at higher opioid dosage.” The CDC specifically explains that “there is now an
 9 established body of scientific evidence showing that overdose risk is increased at higher opioid
 10 dosages.” The CDC also states that there is an “increased risk[] for opioid use disorder,
 11 respiratory depression, and death at higher dosages.” As a result, the CDC advises doctors to
 12 “avoid increasing dosage” above 90 MME per day. These findings contradict statements made
 13 by Defendants that increasing dosage is safe and that under-treatment is the cause for certain
 14 patients’ aberrant behavior.

15 397. The 2016 CDC Guideline also contradicts statements made by Defendants that
 16 there are reliable risk-mitigation tactics to reduce the risk of addiction. For instance, the
 17 Guideline indicates that available risk screening tools “show insufficient accuracy for
 18 classification of patients as at low or high risk for [opioid] abuse or misuse” and counsels that
 19 doctors “should not overestimate the ability of these tools to rule out risks from long-term opioid
 20 therapy.”

21 398. Finally, the 2016 CDC Guideline states that “[n]o studies” support the notion that
 22 “abuse-deterrant technologies [are] a risk mitigation strategy for deterring or preventing abuse,”
 23 noting that the technologies—even when they work—“do not prevent opioid abuse through oral
 24 intake, the most common route of opioid abuse, and can still be abused by nonoral routes.” In
 25 particular, the CDC found as follows:

26 The “abuse-deterrant” label does not indicate that there is no risk for abuse. No
 27 studies were found in the clinical evidence review assessing the effectiveness of

1 abuse-deterrant technologies as a risk mitigation strategy for deterring or
 2 preventing abuse. In addition, abuse-deterrant technologies do not prevent
 3 unintentional overdose through oral intake. Experts agreed that recommendations
 could not be offered at this time related to use of abuse-deterrant formulations.

4 Accordingly, the CDC's findings regarding "abuse-deterrant technologies" directly contradict
 5 Purdue and Endo's claims that their new pills deter or prevent abuse.

6 399. Notably, in addition to the findings made by the CDC in 2016, the Washington
 7 State Agency Medical Directors' Group (AMDG)—a collaboration among several Washington
 8 State Agencies—published its *Interagency Guideline on Prescribing Opioids for Pain* in 2015.
 9 The AMDG came to many of the same conclusions as the CDC did. For example, the AMDG
 10 found that "there is little evidence to support long term efficacy of [chronic opioid analgesic
 11 therapy, or "COAT"] in improving function and pain, [but] there is ample evidence of its risk for
 12 harm . . ."²²⁵

13 400. In addition, as discussed above, in contrast to Defendants' statements that the
 14 1980 Porter and Jick letter provided evidence of the low risk of opioid addiction in pain patients,
 15 the NEJM recently published a letter largely debunking the use of the Porter and Jick letter as
 16 evidence for such a claim.²²⁶ The researchers demonstrated how the Porter and Jick letter was
 17 irresponsibly cited and, in some cases, "grossly misrepresented," when in fact it did not provide
 18 evidence supporting the broad claim of low addiction risk for all patients prescribed opioids for
 19 pain. As noted above, Dr. Jick reviewed only files of patients administered opioids in a hospital
 20 setting, rather than patients sent home with a prescription for opioids to treat chronic pain.

21 401. The authors of the 2017 letter described their methodology as follows:

22 We performed a bibliometric analysis of this [1980] correspondence from its
 23 publication until March 30, 2017. For each citation, two reviewers independently
 24 evaluated the portrayal of the article's conclusions, using an adaptation of an
 25 established taxonomy of citation behavior along with other aspects of
 26 generalizability . . . For context, we also ascertained the number of citations of
 27

²²⁵ *Interagency Guideline on Prescribing Opioids for Pain*, Agency Med. Directors' Group (June 2015), <http://www.agencymeddirectors.wa.gov/Files/2015AMDGOpoidGuideline.pdf>.

²²⁶ Leung, et al., *supra* note 146.

1 other stand-alone letters that were published in nine contemporaneous issues of the
 2 *Journal* (in the index issue and in the four issues that preceded and followed it).

3 We identified 608 citations of the index publication and noted a sizable increase
 4 after the introduction of OxyContin (a long-acting formulation of oxycodone) in
 5 1995 . . . **Of the articles that included a reference to the 1980 letter, the authors**
 6 **of 439 (72.2%) cited it as evidence that addiction was rare in patients treated**
 7 **with opioids. Of the 608 articles, the authors of 491 articles (80.8%) did not**
 8 **note that the patients who were described in the letter were hospitalized at the**
 9 **time they received the prescription, whereas some authors grossly**
misrepresented the conclusions of the letter . . . Of note, affirmational citations
 have become much less common in recent years. In contrast to the 1980
 correspondence, 11 stand-alone letters that were published contemporaneously by
 the *Journal* were cited a median of 11 times.²²⁷ (Emphasis added).

10 402. The researchers provided examples of quotes from articles citing the 1980 letter
 11 and noted several shortcomings and inaccuracies with the quotations. For instance, the
 12 researchers concluded that these quotations (i) “overstate[] conclusions of the index publication,”
 13 (ii) do[] not accurately specify its study population,” and (iii) did not adequately address
 14 “[l]imitations to generalizability.”²²⁸

25

 26²²⁷ *Id.* (emphasis added).

27²²⁸ Supplementary Appendix to Pamela T.M. Leung, B.Sc. Pharm., Erin M. Macdonald, M.Sc., Matthew B.
 Stanbrook, M.D., Ph.D., Irfan Al Dhalla, M.D., David N. Juurlink, M.D., Ph.D., *A 1980 Letter on the Risk of*
Opioid Addiction, 376 New Eng. J. Med. 2194-95 (June 1, 2017),
<https://www.nejm.org/doi/full/10.1056/NEJMc1700150>.

1	Quote	Reference	Comment
2	"This pain population with no abuse history is literally at no risk for addiction."	Kowal N. What is the issue?: pseudoaddiction or undertreatment of pain. <i>Nurs Econ</i> 1998;17(8):348-9	
3	"In truth, however, the medical evidence overwhelmingly indicates that properly administered opioid therapy rarely if ever results in "accidental addiction" or "opioid abuse"."	Libby RT. Treating Doctors as Drug Dealers: The Drug Enforcement Administration's War on Prescription Painkillers. <i>The Independent Review</i> 2006;10(4):511-545.	
4	"Fear of addiction may lead to reluctance by the physician to prescribe. [...] However, there is no evidence that this occurs when prescribing opioids for pain."	Iles S, Catterall JR, Hanks G. Use of opioid analgesics in a patient with chronic abdominal pain. <i>Int J Clin Pract</i> 2002;56(3):227-8.	
5			
6	"In reality, medical opioid addiction is very rare. In Porter and Jick's study on patients treated with narcotics, only four of the 11,882 cases showed psychological dependency."	Liu W, Xie S, Yue L, et al. Investigation and analysis of oncologists' knowledge of morphine usage in cancer pain treatment. <i>Onco Targets Ther</i> 2014;7:729-37.	Overstates conclusions of the index publication does not accurately specify its study population. Limitations to generalizability are not otherwise explicitly mentioned.
7			
8	"Physicians are frequently concerned about the potential for addiction when prescribing opiates; however, there have been studies suggesting that addiction rarely evolves in the setting of painful conditions."	Curtis LA, Morrell TD, Todd KH. Pain Management in the Emergency Department 2006;8(7).	
9			
10	"Although medicine generally regards anecdotal information with disdain (rigorously controlled double-blind clinical trials are the "gold standard"), solid data on the low risk of addiction to opioid analgesics and the manageability of adverse side effects have been ignored or discounted in favor of the anecdotal, the scientifically unsupported, and the clearly fallacious."	Rich BA. Prioritizing pain management in patient care. Has the time come for a new approach. <i>Postgrad Med</i> 2001;110(3):15-7.	
11			
12			
13	"The Boston Drug Surveillance Program reviewed the charts of nearly 12,000 cancer pain patients treated over a decade and found only four of them could be labeled as addicts."	Levy MH. Pharmacologic management of cancer pain. <i>Semin Oncol</i> 1994;21(6):718-39.	Incorrectly identifies the index study population as cancer patients; does not otherwise address limitations to generalizability.
14			
15			
16			
17			
18			
19			

20 403. Based on this review, the researchers concluded as follows:

21 [W]e found that a five-sentence letter published in the Journal in 1980 was heavily
 22 and uncritically cited as evidence that addiction was rare with long-term opioid
 23 therapy. We believe that this citation pattern contributed to the North American
 24 opioid crisis by helping to shape a narrative that allayed prescribers' concerns about
 25 the risk of addiction associated with long-term opioid therapy. In 2007, the
 26 manufacturer of OxyContin and three senior executives pleaded guilty to federal
 27 criminal charges that they misled regulators, doctors, and patients about the risk of
 addiction associated with the drug. Our findings highlight the potential
 consequences of inaccurate citation and underscore the need for diligence when
 citing previously published studies.²²⁹

229 Leung, et al., *supra* note 146.

1 404. These researchers' careful analysis demonstrates the falsity of Defendants' claim
 2 that this 1980 letter was evidence of a low risk of addiction in opioid-treated patients. By casting
 3 this letter as evidence of low risk of addiction, Defendants played fast and loose with the truth,
 4 with blatant disregard for the consequences of their misrepresentations.

5 **H. Bainbridge Island Has Been Directly Affected by the Opioid Epidemic Caused by**
 6 **Defendants.**

7 405. The City of Bainbridge Island, located in western Washington State, has nearly
 8 25,000 residents.

9 406. Much like the rest of the United States, the City of Bainbridge Island has felt the
 10 profound consequences of the opioid epidemic pervading the country. As a direct result of
 11 Defendants' aggressive marketing and relentless distribution of prescription opioids, Bainbridge
 12 Island has suffered significant and ongoing harms—harms that will continue well into the future.
 13 Each day that Defendants continue to evade responsibility for the epidemic they caused, the City
 14 must continue allocating substantial resources to address it.

15 407. The opioid epidemic has been declared a national public health emergency, and
 16 Bainbridge Island is not immune to national trends. Statistics regarding opioid overdoses and
 17 treatment of opioid-use disorder—while not capturing the whole story of this far-reaching
 18 epidemic—provide quantitative indicators of the extent of the crisis.

19 408. In the City of Bainbridge Island, the statistics show that, in recent years, the crisis
 20 has only grown. For example, between 2002-2004 and 2011-2013, the number of opioid-use
 21 treatment admissions within Kitsap County rose 304.6%.²³⁰ From 2002 to 2006, there were 70
 22 opioid-related deaths in Kitsap County;²³¹ this grim count increased to 109 deaths between 2013
 23 and 2017.²³²

24
 25

²³⁰ *Opioid Trends Across Washington State*, U. of Wash. Alcohol & Drug Abuse Inst. (Apr. 2015)
<http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2015-01.pdf>

26 ²³¹ *Washington State Drug Overdose Quarterly Report*, Wash. St. Dep't of Health,
<https://www.doh.wa.gov/DataandStatisticalReports/InjuryViolenceandPoisoning/InjuryData/WashingtonStateInjuryDataTables/OpioidQuarterlyReport> (last visited Aug. 30, 2019).

27 ²³² *Id.*

1 409. In 2013, for every 100 persons in Kitsap County, doctors wrote 72 opioid
 2 prescriptions.²³³

3 410. While families are left with the individual losses these statistics represent, the
 4 City must confront the community-wide costs of the epidemic. The City's police department,
 5 municipal court, and public spaces have all borne the burden of the opioid crisis.

6 411. The opioid epidemic has also contributed to homelessness in Kitsap County,
 7 including in the City of Bainbridge Island. Although the causes of homelessness are multi-
 8 faceted and complex, opioid abuse can be both a cause and result of homelessness. Opioid-use
 9 disorder then compounds the problem of homelessness by making it more difficult for
 10 individuals experiencing homelessness to regain housing stability and economic well-being.

11 412. According to the annual Washington State Point-In-Time Count, the number of
 12 homeless persons in Washington State grew 18.8% from 2013 to 2017. In Kitsap County in
 13 2013, there were 240 homeless households.²³⁴ In 2017, there were 517 homeless households in
 14 the County.²³⁵

15 413. The City of Bainbridge Island has been working to confront the emergency
 16 caused by Defendants' reckless promotion and distribution of prescription opioids. The City has
 17 spent substantial sums in the past and will continue to spend substantial sums in the future to
 18 address the epidemic.

19 **I. No Federal Agency Action, Including by the FDA, Can Provide the Relief
 20 Bainbridge Island Seeks Here.**

21 414. The injuries Bainbridge Island has suffered and will continue to suffer cannot be
 22 addressed by agency or regulatory action. There are no rules the FDA could make or actions the
 23 agency could take that would provide Bainbridge Island the relief it seeks in this litigation.

24
 25 ²³³ *Opioid Overdose, U.S. County Prescribing Rates, 2013*, Ctrs. for Disease Control and Prevention,
<https://www.cdc.gov/drugoverdose/maps/rxcounty2013.html> (last reviewed July 31, 2017).

26 ²³⁴ *2013 Point in Time Count*, Wash. Dep't of Commerce (Jan. 2013), <http://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-pit-final-summary-2013.pdf>.

27 ²³⁵ *2017 Point in Time Count*, Wash. Dep't of Commerce (Aug. 2017), <http://www.commerce.wa.gov/wp-content/uploads/2017/12/CSHD-HAU-2017-County-Summary-August-2017v2.pdf>.

415. Even if prescription opioids were entirely banned today or only used for the intended purpose, millions of Americans, including Bainbridge Island residents, would remain addicted to opioids, and overdoses will continue to claim lives.

416. Regulatory action would do nothing to compensate the City for the money and resources it has already expended addressing the impacts of the opioid epidemic and the resources it will need in the future. Only this litigation has the ability to provide the City with the relief it seeks.

417. Furthermore, the costs Bainbridge Island has incurred in responding to the opioid crisis and in rendering public services described above are recoverable pursuant to the causes of actions raised by the City. Defendants' misconduct alleged herein is not a series of isolated incidents, but instead the result of a sophisticated and complex marketing scheme over the course of more than twenty years that has caused a substantial and long-term burden on the municipal services provided by the City. In addition, the public nuisance created by Defendants and the City's requested relief in seeking abatement further compels Defendants to reimburse and compensate Bainbridge Island for the substantial resources it has expended to address the opioid crisis.

V. CLAIMS FOR RELIEF

COUNT ONE — VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86, ET SEQ.

418. Plaintiff repeats, reasserts, and incorporates the allegations contained above as if fully set forth herein.

419. The Washington Consumer Protection Act is codified at RCW 19.86 *et seq.* (CPA). The CPA establishes a comprehensive framework for redressing the violations of applicable law, and municipalities of Washington State like Bainbridge Island can enforce the CPA and recover damages. RCW 19.86.090. The conduct at issue in this case falls within the scope of the CPA.

420. The CPA prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Defendants engaged and continue to engage

1 in the same pattern of unfair methods of competition, and unfair and/or deceptive conduct
2 pursuant to a common practice of misleading the public regarding the purported benefits and
3 risks of opioids.

4 421. The Manufacturing Defendants, at all times relevant to this Complaint, directly
5 and/or through their control of third parties, violated the CPA by making unfair and/or deceptive
6 representations about the use of opioids to treat chronic and non-cancer pain, including to
7 physicians and consumers in Bainbridge Island. Each Manufacturing Defendant also omitted or
8 concealed material facts and failed to correct prior misrepresentations and omissions about the
9 purported benefits and risks of opioids. In addition, each Manufacturing Defendant's silence
10 regarding the full risks of opioid use constitutes deceptive conduct prohibited by the CPA.

11 422. The Distributor Defendants, at all times relevant to this Complaint, directly and/or
12 through their control of third parties, violated the CPA by making unfair and/or deceptive
13 representations about their compliance with their obligations to maintain effective controls
14 against diversion of prescription opioids and to report suspicious orders. The Distributor
15 Defendants concealed the extent of their opioid distribution in order to avoid the issuance of
16 restrictive quotas, and manipulated the political process to shield themselves from enforcement
17 actions that would have stopped shipments of opioids.

18 423. These unfair methods of competition and unfair and/or deceptive acts or practices
19 in the conduct of trade or commerce were reasonably calculated to deceive Bainbridge Island and
20 its consumers, and did in fact deceive the City and its consumers. Each Manufacturing
21 Defendant's misrepresentations, concealments, and omissions continue to this day.

22 424. As a result of Defendants' misrepresentations, Bainbridge Island has spent
23 substantial sums of money on increased law enforcement, public safety, and other human
24 services.

25 425. But for these unfair methods of competition and unfair and/or deceptive acts or
26 practices in the conduct of trade or commerce, Bainbridge Island would not have incurred the
27 substantial costs related to the epidemic caused by Defendants.

1 426. Logic, common sense, justice, policy, and precedent indicate Manufacturing
2 Defendants' unfair and deceptive conduct has caused the damage and harm complained of
3 herein. Manufacturing Defendants knew or reasonably should have known that their statements
4 regarding the risks and benefits of opioids were false and misleading, and that their statements
5 were causing harm from their continued production and marketing of opioids. The Distributor
6 Defendants knew or reasonably should have known that the proliferation of prescription opioids
7 was causing damage to the City. Thus, the harms caused by Defendants' unfair and deceptive
8 conduct to Bainbridge Island were reasonably foreseeable, including the financial and economic
9 losses incurred by the City.

10 427. Furthermore, Bainbridge Island brings this cause of action in its sovereign
11 capacity for the benefit of the State of Washington. The CPA expressly authorizes local
12 governments to enforce its provisions and to recover damages for violations of the CPA, and this
13 action is brought to promote the public welfare of the state and for the common good of the state.

14 428. As a direct and proximate cause of each Defendant's unfair and deceptive
15 conduct, (i) Bainbridge Island has sustained and will continue to sustain injuries, and (ii)
16 pursuant to RCW 19.86.090, Bainbridge Island is entitled to actual and treble damages in
17 amounts to be determined at trial, attorneys' fees and costs, and all other relief available under
18 the CPA.

19 429. The Court should also grant injunctive relief enjoining Defendants from future
20 violations of the CPA. Defendants' actions, as complained of herein, constitute unfair
21 competition or unfair, deceptive, or fraudulent acts or practices in violation of the CPA.

22 **COUNT TWO — PUBLIC NUISANCE**

23 430. Plaintiff repeats, reasserts, and incorporates the allegations contained above as if
24 fully set forth herein.

25 431. Pursuant to RCW 7.48.010, an actionable nuisance is defined as, *inter alia*,
26 "whatever is injurious to health or indecent or offensive to the senses . . ."

1 432. Pursuant to RCW 7.48.130, “A public nuisance is one which affects equally the
2 rights of an entire community or neighborhood, although the extent of the damage may be
3 unequal.”

4 433. Bainbridge Island and its residents have a right to be free from conduct that
5 endangers their health and safety. Yet Defendants have engaged in conduct which endangers or
6 injures the health and safety of the residents of the City by their production, promotion,
7 distribution, and marketing of opioids for use by residents of Bainbridge Island and in a manner
8 that substantially interferes with the welfare of Bainbridge Island.

9 434. Each Defendant has created or assisted in the creation of a condition that is
10 injurious to the health and safety of Bainbridge Island and its residents, and interferes with the
11 comfortable enjoyment of life and property of entire communities and/or neighborhoods in the
12 City.

13 435. Defendants’ conduct has directly caused deaths, serious injuries, and a severe
14 disruption of the public peace, order and safety, including fueling the homeless and heroin crises
15 facing the City described herein. Defendants’ conduct is ongoing and continues to inflict long-
16 lasting harms on the City.

17 436. The health and safety of the residents of Bainbridge Island, including those who
18 use, have used, or will use opioids, as well as those affected by users of opioids, are matters of
19 substantial public interest and of legitimate concern to the City’s citizens and its residents.

20 437. Defendants’ conduct has affected and continues to affect a substantial number of
21 people within Bainbridge Island and is likely to continue causing significant harm to patients
22 with chronic pain who are being prescribed and take opioids, their families, and their
23 communities.

24 438. But for Defendants’ actions, opioid use and ultimately its misuse and abuse would
25 not be as widespread as it is today, and the massive epidemic of opioid abuse that currently exists
26 would have been averted.

1 439. Logic, common sense, justice, policy, and precedent indicate Defendants' unfair
2 and deceptive conduct has caused the damage and harm complained of herein. Manufacturing
3 Defendants knew or reasonably should have known that their statements regarding the risks and
4 benefits of opioids were false and misleading, and that their false and misleading statements
5 were causing harm from their continued production and marketing of opioids. Distributor
6 Defendants knew that the widespread distribution of opioids would endanger the health and
7 safety of residents of Bainbridge Island. Thus, the public nuisance caused by Defendants to
8 Bainbridge Island was reasonably foreseeable, including the financial and economic losses
9 incurred by the City.

10 440. Furthermore, Bainbridge Island brings this cause of action in its sovereign
11 capacity for the benefit of the State of Washington. The applicable RCW with respect to a public
12 nuisance expressly prohibits the conduct complained of herein, and this action is brought to
13 promote the public welfare of the state and for the common good of the state.

14 441. In addition, engaging in any business in defiance of a law regulating or
15 prohibiting the same is a nuisance per se under Washington law. Each Defendant's conduct
16 described herein of deceptively marketing or excessively distributing opioids violates RCW
17 7.48.010 and therefore constitutes a nuisance per se.

18 442. As a direct and proximate cause of Defendants' conduct creating or assisting in
19 the creation of a public nuisance, Bainbridge Island, its community, and its residents have
20 sustained and will continue to sustain substantial injuries.

21 443. Pursuant to RCW 7.48.020, Bainbridge Island requests an order providing for
22 abatement of the public nuisance that each Defendant has created or assisted in the creation of,
23 and enjoining Defendants from future violations of RCW 7.48.010.

24 444. Bainbridge Island also seeks the maximum statutory and civil penalties permitted
25 by law as a result of the public nuisance created by Defendants.

COUNT THREE — NEGLIGENCE

445. Plaintiff repeats, reasserts, and incorporates the allegations contained above as if fully set forth herein.

446. Under Washington law, a cause of action arises for negligence when a defendant owes a duty to a plaintiff and breaches that duty, and proximately causes the resulting injury. *Iwai v. State*, 129 Wn. 2d 84, 96, 915 P.2d 1089 (1996).

447. Each Defendant owed a duty of care to Bainbridge Island, including but not limited to taking reasonable steps to prevent the misuse, abuse, and over-prescription of opioids.

448. In violation of this duty, Defendants failed to take reasonable steps to prevent the misuse, abuse, and over-prescription of opioids in Bainbridge Island by misrepresenting the risks and benefits associated with opioids and by distributing dangerous quantities of opioids.

449. As set forth above, Manufacturing Defendants' misrepresentations include falsely claiming that the risk of opioid addiction was low, falsely instructing doctors and patients that prescribing more opioids was appropriate when patients presented symptoms of addiction, falsely claiming that risk-mitigation strategies could safely address concerns about addiction, falsely claiming that doctors and patients could increase opioid doses indefinitely without added risk, deceptively marketing that purported abuse-deterrent technology could curb misuse and addiction, and falsely claiming that long-term opioid use could actually restore function and improve a patient's quality of life. Each of these misrepresentations made by Defendants violated the duty of care to Bainbridge Island.

450. Distributor Defendants negligently distributed enormous quantities of potent narcotics and failed to report such distributions. Distributor Defendants violated their duty of care by moving these dangerous products into Bainbridge Island in such quantities, facilitating diversion, misuse, and abuse of opioids.

451. As a direct and proximate cause of Defendants' unreasonable and negligent conduct, Plaintiff has suffered and will continue to suffer harm, and is entitled to damages in an amount determined at trial.

COUNT FOUR — GROSS NEGLIGENCE

452. Plaintiff repeats, reasserts, and incorporates the allegations contained above as if fully set forth herein.

453. As set forth above, each Defendant owed a duty of care to Bainbridge Island, including but not limited to taking reasonable steps to prevent the misuse, abuse, and over-prescription of opioids.

454. In violation of this duty, each Defendant failed to take reasonable steps to prevent the misuse, abuse, and over-prescription of opioids in Bainbridge Island by misrepresenting the risks and benefits associated with opioids.

455. In addition, each Defendant knew or should have known, and/or recklessly disregarded, that the opioids they manufactured, promoted, and distributed were being used for unintended uses.

456. For instance, Defendants failed to exercise slight care to Bainbridge Island by, *inter alia*, failing to take appropriate action to stop opioids from being used for unintended purposes. Furthermore, despite each Defendant’s actual or constructive knowledge of the wide proliferation of prescription opioids in Bainbridge Island, Defendants took no action to prevent the abuse and diversion of these drugs. In fact, Manufacturing Defendants promoted and actively targeted doctors and their patients through training their sales representatives to encourage doctors to prescribe more opioids.

457. Manufacturing Defendants' misrepresentations include falsely claiming that the risk of opioid addiction was low, falsely instructing doctors and patients that prescribing more opioids was appropriate when patients presented symptoms of addiction, falsely claiming that risk-mitigation strategies could safely address concerns about addiction, falsely claiming that doctors and patients could increase opioid doses indefinitely without added risk, deceptively marketing that purported abuse-deterrent technology could curb misuse and addiction, and falsely claiming that long-term opioid use could actually restore function and improve a patient's quality of life. Each of these misrepresentations made by Manufacturing Defendants violated the

duty of care to Bainbridge Island, in a manner that is substantially and appreciably greater than ordinary negligence.

458. Distributor Defendants continued to funnel enormous quantities of opioids into Bainbridge Island, long after they knew that these products were being misused, abused, and diverted. By permitting the movement of such excessive quantities of dangerous narcotics into Bainbridge Island, Distributor Defendants endangered the health and safety of Bainbridge Island residents, in a manner that is substantially and appreciably greater than ordinary negligence.

459. As a direct and proximate cause of each Defendant's gross negligence, Bainbridge Island has suffered and will continue to suffer harm, and is entitled to damages in an amount determined at trial.

COUNT FIVE — UNJUST ENRICHMENT

460. Plaintiff repeats, reasserts, and incorporates the allegations contained above as if fully set forth herein.

461. Each Defendant was required to take reasonable steps to prevent the misuse, abuse, and over-prescription of opioids.

462. Rather than prevent or mitigate the wide proliferation of opioids into Bainbridge Island, each Defendant instead chose to place its monetary interests first, and each Defendant profited from prescription opioids sold in Bainbridge Island.

463. Each Defendant also failed to maintain effective controls against the unintended and illegal use of the prescription opioids it manufactured or distributed, again choosing instead to place its monetary interests first.

464. Each Defendant therefore received a benefit from the sale and distribution of prescription opioids to and in Bainbridge Island, and these Defendants have been unjustly enriched at the expense of Bainbridge Island.

465. As a result, Bainbridge Island is entitled to damages on its unjust enrichment claim in an amount to be proven at trial.

1 **COUNT SIX — VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT
2 ORGANIZATIONS ACT (“RICO”), 18 U.S.C. § 1961, ET SEQ.**

3 466. Plaintiff hereby incorporates by reference the allegations contained in the
4 preceding paragraphs of this complaint.

5 467. This claim is brought by Plaintiff against each Defendant for actual damages,
6 treble damages, and equitable relief under 18 U.S.C. § 1964 for violations of 18 U.S.C. § 1961,
7 *et seq.*

8 468. At all relevant times, each Defendant is and has been a “person” within the
9 meaning of 18 U.S.C. § 1961(3), because they are capable of holding, and do hold, “a legal or
10 beneficial interest in property.”

11 469. Plaintiff is a “person,” as that term is defined in 18 U.S.C. § 1961(3), and has
12 standing to sue as it was and is injured in its business and/or property as a result of the
13 Defendants’ wrongful conduct described herein.

14 470. Section 1962(c) makes it “unlawful for any person employed by or associated
15 with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce,
16 to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through
17 a pattern of racketeering activity . . . ” 18 U.S.C. § 1962(c).

18 471. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section
19 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).

20 472. Each Defendant conducted the affairs of an enterprise through a pattern of
21 racketeering activity, in violation of 18 U.S.C. § 1962(c) and § 1962(d).

22 **A. Description of the Defendants’ Enterprises.**

23 473. RICO defines an enterprise as “any individual, partnership, corporation,
24 association, or other legal entity, and any union or group of individuals associated in fact
25 although not a legal entity.” 18 U.S.C. § 1961(4).

26 474. Under 18 U.S.C. § 1961(4) a RICO “enterprise” may be an association-in-fact
27 that, although it has no formal legal structure, has (i) a common purpose, (ii) relationships among

1 those associated with the enterprise, and (iii) longevity sufficient to pursue the enterprise's
 2 purpose. *See Boyle v. United States*, 556 U.S. 938, 946 (2009).

3 475. Defendants formed two such association-in-fact enterprises—referred to herein as
 4 “the Opioid Marketing Enterprise” and “the Opioid Supply Chain Enterprise.”

5 476. The Opioid Marketing Enterprise consists of the Sackler Family Defendants,
 6 Defendants Endo, Janssen, Teva, Actavis, and Mallinckrodt, Front Groups, and KOLs. In
 7 particular, the Opioid Marketing Enterprise consists of (a) the Sackler Family Defendants, who
 8 controlled Purdue, (b) Defendant Endo, including its employees and agents, (c) Defendant
 9 Janssen, including its employees and agents, (d) Defendant Teva, including its employees and
 10 agents, (e) Defendant Actavis, including its employees and agents, and (f) Defendant
 11 Mallinckrodt, including its employees and agents (collectively, “Marketing Defendants”); certain
 12 front groups described above, including but not limited to (a) the American Pain Foundation,
 13 including its employees and agents, (b) the American Academy of Pain Medicine, including its
 14 employees and agents, and (c) the American Pain Society, including its employees and agents
 15 (collectively, the “Front Groups”); and certain Key Opinion Leaders, including but not limited to
 16 (a) Dr. Russell Portenoy, (b) Dr. Perry Fine, (c) Dr. Lynn Webster, and (d) Dr. Scott Fishman
 17 (collectively, the “KOLs”). The entities in the Opioid Marketing Enterprise acted in concert to
 18 create demand for prescription opioids.

19 477. Alternatively, each of the above-named Marketing Defendants and Front Groups
 20 constitutes a single legal entity “enterprise” within the meaning of 18 U.S.C. § 1961(4), through
 21 which the members of the enterprise conducted a pattern of racketeering activity. The separate
 22 legal status of each member of the Enterprise facilitated the fraudulent scheme and provided a
 23 hoped-for shield from liability for Defendants and their co-conspirators.

24 478. Alternatively, each of the Marketing Defendants, together with the Distributor
 25 Defendants, the Front Groups, and the KOLs, constitute separate, associated-in-fact Enterprises
 26 within the meaning of 18 U.S.C. § 1961(4).

1 479. The Opioid Supply Chain Enterprise consists of all Defendants. In particular, the
 2 Opioid Supply Chain Enterprise consists of (a) the Sackler Family Defendants, who controlled
 3 Purdue, (b) Defendant Endo, including its employees and agents, (c) Defendant Janssen,
 4 including its employees and agents, (d) Defendant Teva, including its employees and agents, (e)
 5 Defendant Actavis, including its employees and agents, (f) Defendant Mallinckrodt, including its
 6 employees and agents, (g) Defendant AmerisourceBergen, including its employees and agents,
 7 (h) Defendant Cardinal Health, including its employees and agents, and (i) Defendant
 8 McKesson, including its employees and agents (collectively, “Defendants”).

9 480. The CSA and its implementing regulations require all manufacturers and
 10 distributors of controlled substances, including opioids, to maintain a system to identify and
 11 report suspicious orders, including orders of unusual size or frequency, or orders deviating from
 12 a normal pattern, and maintain effective controls against diversion of controlled substances. *See*
 13 21 U.S.C. § 823; 21 C.F.R. §1301.74(b). All Defendants—manufacturers and distributors
 14 alike—are required to become “registrants” under the CSA, 21 U.S.C. § 823(a)-(b), and its
 15 implementing regulations, which provide that “[e]very person who manufactures, distributes,
 16 dispenses, imports, or exports any controlled substance. . . shall obtain a registration[.]” 21
 17 C.F.R. § 1301.11(a). Defendants’ duties as registrants include reporting suspicious orders of
 18 controlled substances, which are defined as including “orders of unusual size, orders deviating
 19 substantially from a normal pattern, and orders of unusual frequency.” 21 C.F.R. § 1301.74(b).

20 481. The Manufacturing Defendants carried out the Opioid Supply Chain Enterprise by
 21 incentivizing and supplying suspicious sales of opioids, despite their knowledge that their
 22 opioids were being diverted to illicit use, and by failing to notify the DEA of such suspicious
 23 orders as required by law. The Distributor Defendants carried out the Opioid Supply Chain
 24 Enterprise by failing to maintain effective controls against diversion, intentionally evading their
 25 obligation to report suspicious orders to the DEA, and conspiring to prevent limits on the
 26 prescription opioids they were oversupplying to communities like Plaintiff.

1 482. The Opioid Marketing Enterprise is an ongoing and continuing business
 2 organization consisting of “persons” within the meaning of 18 U.S.C. § 1961(3) that created and
 3 maintained systematic links for a common purpose: to sell highly addictive opioids for treatment
 4 of chronic pain while knowing that opioids have little or no demonstrated efficacy for such pain
 5 and have significant risk of addiction, overdose, and death.

6 483. The Opioid Supply Chain Enterprise is an ongoing and continuing business
 7 organization consisting of “persons” within the meaning of 18 U.S.C. § 1961(3) that created and
 8 maintained systematic links for a common purpose: to distribute highly addictive opioids in
 9 quantities that far exceeded amounts that could reasonably be considered medically necessary.

10 484. To accomplish these purposes, the Opioid Marketing Enterprise engaged in a
 11 sophisticated, well-developed, and fraudulent marketing scheme designed to increase the
 12 prescription rate for Defendants’ opioid medications (the “Marketing Scheme”), and the Opioid
 13 Supply Chain Enterprise carried out a scheme to systematically disregard, avoid, or frustrate the
 14 monitoring and reporting requirements intended to prevent the widespread distribution of
 15 dangerous controlled substances (the “Diversion Scheme”). The Marketing Scheme and the
 16 Diversion Scheme are collectively referred to as the “Schemes.” Together, Defendants engaged
 17 in these broad Schemes with the overarching purposes of materially expanding prescription
 18 opioid use by altering the medical community’s opioid prescribing practices through repeated
 19 fraudulent statements and misrepresentations and materially expanding prescription opioid
 20 supply by avoiding monitoring requirements and actively seeking higher quotas.

21 **B. The Enterprises Sought to Fraudulently Increase Defendants’ Profits and Revenues**

22 485. At all relevant times, each Defendant was aware of the conduct of the Enterprises,
 23 was a knowing and willing participant in that conduct, and reaped profits from that conduct in
 24 the form of increased sales and distribution of prescription opioids. In addition, the Front Groups
 25 and KOLs received direct payments from the Marketing Defendants in exchange for their role in
 26 the Opioid Marketing Enterprise, and to advance the Opioid Marketing Enterprise’s fraudulent
 27 marketing scheme.

1 486. The Enterprises engaged in, and their activities affected, interstate and foreign
 2 commerce because they involved commercial activities across state boundaries, including but not
 3 limited to: (1) the marketing, promotion, and distribution of prescription opioids; (2) advocacy at
 4 the state and federal level for change in the law governing the use and prescription of
 5 prescription opioids; (3) the issuance of prescriptions and prescription guidelines for opioids; (4)
 6 the issuance of fees, bills, and statements demanding payment for prescriptions of opioids; (5)
 7 payments, rebates, and chargebacks between Defendants; and (6) the creation of documents,
 8 reports, and communications related to Defendants' reporting requirements under the CSA and
 9 its implementing regulations.

10 487. The persons engaged in the Enterprises are systematically linked through
 11 contractual relationships, financial ties, and continuing coordination of activities, as spearheaded
 12 by Defendants. With respect to the Opioid Marketing Enterprise, each Marketing Defendant
 13 funded and directed the operations of the KOLs and the Front Groups; in fact, the board of
 14 directors of each of the Front Groups are and were full of doctors who were on the Marketing
 15 Defendants' payrolls, either as consultants or speakers at medical events. Moreover, each
 16 Marketing Defendant coordinated and, at times, co-funded their activities in furtherance of the
 17 goals of the Enterprise. This coordination can also be inferred through the consistent
 18 misrepresentations described below. With respect to the Opioid Supply Chain Enterprise,
 19 Defendants were financially linked through a system of payments, rebates, and chargebacks.

20 488. In the Opioid Marketing Enterprise, there is regular communication between each
 21 Marketing Defendant, each of the Front Groups, and each KOL in which information regarding
 22 the Defendants' scheme to increase opioid prescriptions is shared. Typically, this communication
 23 occurred, and continues to occur, through the use of the wires and the mail in which Marketing
 24 Defendants, the Front Groups, and the KOL share information regarding the operation of the
 25 Opioid Marketing Enterprise.

26 489. In the Opioid Supply Chain Enterprise, there is regular communication between
 27 each Defendant in which information regarding the Defendants' scheme to oversupply opioids

1 and avoid restrictive regulations or quotas is shared. Typically, this communication occurred,
 2 and continues to occur, through the use of the wires and the mail in which Defendants share
 3 information regarding the operation of the Opioid Supply Chain Enterprise.

4 490. The Enterprises functioned as continuing units for the purposes of executing the
 5 Schemes, and when issues arose during the Schemes, each member of the Enterprises agreed to
 6 take actions to hide the Schemes and the existence of the Enterprises.

7 491. Each Defendant participated in the operation and management of the Enterprises
 8 by directing its affairs as described herein.

9 492. While Defendants participate in, and are members of, the Enterprises, they have
 10 an existence separate from the Enterprises, including distinct legal statuses, affairs, offices and
 11 roles, officers, directors, employees, and individual personhood.

12 493. Each Marketing Defendant orchestrated the affairs of the Opioid Marketing
 13 Enterprise and exerted substantial control over the Opioid Marketing Enterprise by, at least: (1)
 14 making misleading statements about the purported benefits, efficacy, and risks of opioids to
 15 doctors, patients, the public, and others, in the form of telephonic and electronic
 16 communications, CME programs, medical journals, advertisements, and websites; (2) employing
 17 sales representatives to promote the use of opioid medications; (3) purchasing and utilizing
 18 sophisticated marketing data (e.g., IMS data) to coordinate and refine the Marketing Scheme; (4)
 19 employing doctors to serve as speakers at or attend all-expense paid trips to programs
 20 emphasizing the benefits of prescribing opioid medications; (5) funding, controlling, and
 21 operating the Front Groups, including the American Pain Foundation and the Pain & Policy
 22 Studies Group; (6) sponsoring CME programs that claimed that opioid therapy has been shown
 23 to reduce pain and depressive symptoms; (7) supporting and sponsoring guidelines indicating
 24 that opioid medications are effective and can restore patients' quality of life; (8) retaining KOLs
 25 to promote the use of opioids; and (9) concealing the true nature of their relationships with the
 26 other members of the Marketing Scheme, and the Opioid Marketing Enterprise, including the
 27 Front Groups and the KOLs.

1 494. The Front Groups orchestrated the affairs of the Opioid Marketing Enterprise and
 2 exerted substantial control over the Opioid Marketing Enterprise by, at least: (1) making
 3 misleading statements about the purported benefits, efficacy, and low risks of opioids described
 4 herein; (2) holding themselves out as independent advocacy groups, when in fact their operating
 5 budgets are entirely comprised of contributions from opioid drug manufacturers; (3) publishing
 6 treatment guidelines that advised the prescription of opioids; (4) sponsoring medical education
 7 programs that touted the benefits of opioids to treat chronic pain while minimizing and
 8 trivializing their risks; and (5) concealing the true nature of their relationship with the other
 9 members of the Opioid Marketing Enterprise.

10 495. The KOLs orchestrated the affairs of the Opioid Marketing Enterprise and exerted
 11 substantial control over the Opioid Marketing Enterprise by, at least: (1) making misleading
 12 statements about the purported benefits, efficacy, and low risks of opioids; (2) holding
 13 themselves out as independent, when in fact they are systematically linked to and funded by
 14 opioid drug manufacturers; and (3) concealing the true nature of their relationship with the other
 15 members of the Opioid Marketing Enterprise.

16 496. Without the willing participation of each member of the Opioid Marketing
 17 Enterprise, the Marketing Scheme and the Opioid Marketing Enterprise's common course of
 18 conduct would not have been successful.

19 497. Each Distributor Defendant orchestrated the affairs of the Opioid Supply Chain
 20 Enterprise and exerted substantial control over the Opioid Supply Chain Enterprise by, at least:
 21 (1) refusing or failing to identify, investigate, or report suspicious orders of opioids to the DEA;
 22 (2) providing the Manufacturing Defendants with data regarding their prescription opioid sales,
 23 including purchase orders and ship notices; (3) accepting payments from the Manufacturing
 24 Defendants in the form of rebates and/or chargebacks; (4) filling suspicious orders for
 25 prescription opioids despite having identified them as suspicious and knowing opioids were
 26 being diverted into the illicit drug market; (5) working with other members of the Enterprise
 27 through groups like the Healthcare Distribution Alliance and the Pain Care Forum to ensure the

1 free flow of opioids, including by supporting limits on the DEA's ability to use immediate
2 suspension orders; and (6) concealing the true nature of their relationships with the other
3 members of the Opioid Supply Chain Enterprise.

4 498. Each Manufacturing Defendant orchestrated the affairs of the Opioid Supply
5 Chain Enterprise and exerted substantial control over the Opioid Supply Chain Enterprise by, at
6 least: (1) refusing or failing to identify, investigate, or report suspicious orders of opioids to the
7 DEA; (2) obtaining from the Distributor Defendants data regarding their prescription opioid
8 sales, including purchase orders and ship notices; (3) providing payments to the Distributor
9 Defendants in the form of rebates and/or chargebacks; (4) working with other members of the
10 Opioid Supply Chain Enterprise through groups like the Healthcare Distribution Alliance to
11 ensure the free flow of opioids, including by supporting limits on the DEA's ability to use
12 immediate suspension orders; and (5) concealing the true nature of their relationships with the
13 other members of the Opioid Supply Chain Enterprise.

14 499. Without the willing participation of each member of the Opioid Supply Chain
15 Enterprise, the Diversion Scheme and the Opioid Supply Chain Enterprise's common course of
16 conduct would not have been successful.

17 **C. Predicate Acts: Mail and Wire Fraud**

18 500. To carry out, or attempt to carry out, the Schemes, the members of the
19 Enterprises, each of whom is a person associated-in-fact with the Enterprises, did knowingly
20 conduct or participate in, directly or indirectly, the affairs of the Enterprises through a pattern of
21 racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c), and
22 employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud)
23 and § 1343 (wire fraud).

24 501. Specifically, the members of the Enterprises have committed, conspired to
25 commit, and/or aided and abetted in the commission of, at least two predicate acts of
26 racketeering activity (i.e., violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years.
27

1 502. The multiple acts of racketeering activity which the members of the Enterprises
2 committed, or aided or abetted in the commission of, were related to each other, posed a threat of
3 continued racketeering activity, and therefore constitute a “pattern of racketeering activity.”

4 503. The racketeering activity was made possible by the Enterprises’ regular use of the
5 facilities, services, distribution channels, and employees of the Enterprises.

6 504. The members of the Enterprises participated in the Schemes by using mail,
7 telephone, and the internet to transmit mailings and wires in interstate or foreign commerce.

8 505. The members of the Enterprises used, directed the use of, and/or caused to be
9 used, thousands of interstate mail and wire communications in service of their Schemes through
10 common misrepresentations, concealments, and material omissions.

11 506. In devising and executing the illegal Schemes, the members of the Enterprises
12 devised and knowingly carried out a material scheme and/or artifice to defraud Plaintiff and the
13 public to obtain money by means of materially false or fraudulent pretenses, representations,
14 promises, or omissions of material facts.

15 507. For the purpose of executing the illegal Schemes, the members of the Enterprises
16 committed these racketeering acts, which number in the thousands, intentionally and knowingly
17 with the specific intent to advance the illegal Schemes.

18 508. The Enterprises’ predicate acts of racketeering (18 U.S.C. § 1961(1)) include, but
19 are not limited to:

20 A. Mail Fraud: The members of the Enterprises violated 18 U.S.C. § 1341 by
21 sending or receiving, or by causing to be sent and/or received, fraudulent materials
22 via U.S. mail or commercial interstate carriers for the purpose of selling and
distributing excessive quantities of highly addictive opioids.

23 B. Wire Fraud: The members of the Enterprises violated 18 U.S.C. § 1343 by
24 transmitting and/or receiving, or by causing to be transmitted and/or received,
25 fraudulent materials by wire for the purpose of selling and distributing excessive
quantities of highly addictive opioids.

26 509. The Marketing Defendants falsely and misleadingly used the mails and wires in
27 violation of 18 U.S.C. § 1341 and § 1343. Illustrative and non-exhaustive examples include the

1 following: Purdue's (1) May 31, 1996 press release announcing the release of OxyContin and
2 indicating that the fear of OxyContin's addictive properties was exaggerated; (2) 1990
3 promotional video in which Dr. Portenoy, a paid Purdue KOL, understated the risk of opioid
4 addiction; (3) 1998 promotional video which misleadingly cited a 1980 NEJM letter in support
5 of the use of opioids to treat chronic pain; (4) statements made on its 2000 "Partners Against
6 Pain" website which claimed that the addiction risk of OxyContin was very low; (5) literature
7 distributed to physicians which misleadingly cited a 1980 NEJM letter in support of the use of
8 opioids to treat chronic pain; (6) August 2001 statements to Congress by Purdue Executive Vice
9 President and Chief Operating Officer Michael Friedman regarding the value of OxyContin in
10 treating chronic pain; (7) patient brochure entitled "A Guide to Your New Pain Medicine and
11 How to Become a Partner Against Pain" indicating that OxyContin is non-addicting; (8) 2001
12 statement by Senior Medical Director for Purdue, Dr. David Haddox, indicating that the
13 'legitimate' use of OxyContin would not result in addiction; (9) multiple sales representatives'
14 communications regarding the low risk of addiction associated with opioids; (10) statements
15 included in promotional materials for opioids distributed to doctors via the mail and wires; (11)
16 statements in a 2003 Patient Information Guide distributed by Purdue indicating that addiction to
17 opioid analgesics in properly managed patients with pain has been reported to be rare; (12)
18 telephonic and electronic communications to doctors and patients indicating that signs of
19 addiction in the case of opioid use are likely only the signs of under-treated pain; (13) statements
20 in Purdue's Risk Evaluation and Mitigation Strategy for OxyContin indicating that drug-seeking
21 behavior on the part of opioid patients may, in fact, be pain-relief seeking behavior; (14)
22 statements made on Purdue's website and in a 2010 "Dear Healthcare Professional" letter
23 indicating that opioid dependence can be addressed by dosing methods such as tapering; (15)
24 statements included in a 1996 sales strategy memo indicating that there is no ceiling dose for
25 opioids for chronic pain; (16) statements on its website that abuse-resistant products can prevent
26 opioid addiction; (17) statements made in a 2012 series of advertisements for OxyContin
27 indicating that long-term opioid use improves patients' function and quality of life; (18)

1 statements made in advertising and a 2007 book indicating that pain relief from opioids improve
 2 patients' function and quality of life; (19) telephonic and electronic communications by its sales
 3 representatives indicating that opioids will improve patients' function; and (20) electronic and
 4 telephonic communications concealing its relationship with the other members of the
 5 Enterprises.

6 510. Defendant Endo Pharmaceuticals, Inc. also made false or misleading claims in
 7 violation of 18 U.S.C. § 1341 and § 1343 including but not limited to: (1) statements made,
 8 beginning in at least 2009, on an Endo-sponsored website, PainKnowledge.com, indicating that
 9 patients who take opioids as prescribed usually do not become addicted; (2) statements made on
 10 another Endo-sponsored website, PainAction.com, indicating that most chronic pain patients do
 11 not become addicted to opioid medications; (3) statements in pamphlets and publications
 12 described by Endo indicating that most people who take opioids for pain relief do not develop an
 13 addiction; (4) statements made on the Endo-run website, Opana.com, indicating that opioid use
 14 does not result in addiction; (5) statements made on the Endo-run website, Opana.com,
 15 indicating that opioid dependence can be addressed by dosing methods such as tapering; (6)
 16 statements made on its website, PainKnowledge.com, that opioid dosages could be increased
 17 indefinitely; (7) statements made in a publication entitled "Understanding Your Pain: Taking
 18 Oral Opioid Analgesics" suggesting that opioid doses can be increased indefinitely; (8)
 19 electronic and telephonic communications to its sales representatives indicating that the formula
 20 for its medicines is 'crush resistant;' (9) statements made in advertisements and a 2007 book
 21 indicating that pain relief from opioids improves patients' function and quality of life; (10)
 22 telephonic and electronic communications by its sales representatives indicating that opioids will
 23 improve patients' function; and (11) telephonic and electronic communications concealing its
 24 relationship with the other members of the Enterprises.

25 511. Defendant Janssen made false or misleading claims in violation of 18 U.S.C. §
 26 1341 and § 1343 including but not limited to: (1) statements on its website,
 27 PrescribeResponsibly.com, indicating that concerns about opioid addiction are overestimated; (2)

1 statements in a 2009 patient education guide claiming that opioids are rarely addictive when used
 2 properly; (3) statements included on a 2009 Janssen-sponsored website promoting the concept of
 3 opioid pseudoaddiction; (4) statements on its website, PrescribeResponsibly.com, advocating the
 4 concept of opioid pseudoaddiction; (5) statements on its website, PrescribeResponsibly.com,
 5 indicating that opioid addiction can be managed; (6) statements in its 2009 patient education
 6 guide indicating the risks associated with limiting the dosages of pain medicines; (7) telephonic
 7 and electronic communications by its sales representatives indicating that opioids will improve
 8 patients' function; and (8) telephonic and electronic communications concealing its relationship
 9 with the other members of the Enterprises.

10 512. The American Academy of Pain Medicine made false or misleading claims in
 11 violation of 18 U.S.C. § 1341 and § 1343 including but not limited to: (1) statements made in a
 12 2009 patient education video entitled “Finding Relief: Pain Management for Older Adults”
 13 indicating the opioids are rarely addictive; and (2) telephonic and electronic communications
 14 concealing its relationship with the other members of the Opioid Marketing Enterprise.

15 513. The American Pain Society Quality of Care Committee made a number of false or
 16 misleading claims in violation of 18 U.S.C. § 1341 and § 1343 including but not limited to: (1) a
 17 May 31, 1996 press release in which the organization claimed there is very little risk of addiction
 18 from the proper use of drugs for pain relief; and (2) telephonic and electronic communications
 19 concealing its relationship with the other members of the Opioid Marketing Enterprise.

20 514. The American Pain Foundation (“APF”) made a number of false and misleading
 21 claims in violation of 18 U.S.C. § 1341 and § 1343 including but not limited to: (1) statements
 22 made by an APF Executive Director to Congress indicating that opioids only rarely lead to
 23 addiction; (2) statements made in a 2002 amicus curiae brief filed with an Ohio appeals court
 24 claiming that the risk of abuse does not justify restricting opioid prescriptions for the treatment
 25 of chronic pain; (3) statements made in a 2007 publication entitled “Treatment Options: A Guide
 26 for People Living with Pain” indicating that the risks of addiction associated with opioid
 27 prescriptions have been overstated; (4) statements made in a 2002 court filing indicating that

1 opioid users are not “actual addicts;” (5) statements made in a 2007 publication entitled
 2 “Treatment Options: A Guide for People Living with Pain” indicating that even physical
 3 dependence on opioids does not constitute addiction; (6) claims on its website that there is no
 4 ceiling dose for opioids for chronic pain; (7) statements included in a 2011 guide indicating that
 5 opioids can improve daily function; and (8) telephonic and electronic communications
 6 concealing its relationship with the other members of the Opioid Marketing Enterprise.

7 515. The KOLs, including Drs. Russell Portenoy, Perry Fine, Scott Fishman, and Lynn
 8 Webster, made a number of misleading statements in the mail and wires in violation of 18 U.S.C.
 9 § 1341 and § 1343, described above, including statements made by Dr. Portenoy in a
 10 promotional video indicating that the likelihood of addiction to opioid medications is extremely
 11 low. Indeed, Dr. Portenoy has since admitted that his statements about the safety and efficacy of
 12 opioids were false.

13 516. The Manufacturing Defendants and Distributor Defendants falsely and
 14 misleadingly used the mails and wires in violation of 18 U.S.C. § 1341 and § 1343. Illustrative
 15 and non-exhaustive examples include the following: (1) the transmission of documents and
 16 communications regarding the sale, shipment, and delivery of excessive quantities of
 17 prescription opioids, including invoices and shipping records; (2) the transmission of documents
 18 and communications regarding their requests for higher aggregate production quotas, individual
 19 manufacturing quotas, and procurement quotas; (3) the transmission of reports to the DEA that
 20 did not disclose suspicious orders as required by law; (4) the transmission of documents and
 21 communications regarding payments, rebates, and chargebacks; (5) the transmission of the actual
 22 payments, rebates, and chargebacks themselves; (6) correspondence between Defendants and
 23 their representatives in front groups and trade organizations regarding efforts to curtail
 24 restrictions on opioids and hobble DEA enforcement actions; (7) the submission of false and
 25 misleading certifications required annually under various agreements between Defendants and
 26 federal regulators; and (8) the shipment of vast quantities of highly addictive opioids. Defendants
 27 also communicated by U.S. mail, by interstate facsimile, and by interstate electronic mail and

1 with various other affiliates, regional offices, regulators, distributors, and other third-party
 2 entities in furtherance of the scheme.

3 517. In addition, the Distributor Defendants misrepresented their compliance with laws
 4 requiring them to identify, investigate, and report suspicious orders of prescription opioids and/or
 5 diversion into the illicit market. At the same time, the Distributor Defendants misrepresented the
 6 effectiveness of their monitoring programs, their ability to detect suspicious orders, their
 7 commitment to preventing diversion of prescription opioids, and their compliance with
 8 regulations regarding the identification and reporting of suspicious orders of prescription opioids.

9 518. The mail and wire transmissions described herein were made in furtherance of
 10 Defendants' Schemes and common course of conduct designed to sell drugs that have little or no
 11 demonstrated efficacy for the pain they are purported to treat in the majority of persons
 12 prescribed them; increase the prescription rate for opioid medications; and popularize the
 13 misunderstanding that the risk of addiction to prescription opioids is low when used to treat
 14 chronic pain, and to deceive regulators and the public regarding Defendants' compliance with
 15 their obligations to identify and report suspicious orders of prescription opioids, while
 16 Defendants intentionally enabled millions of prescription opioids to be deposited into
 17 communities across the United States, including in Bainbridge Island. Defendants' scheme and
 18 common course of conduct was intended to increase or maintain high quotas for the manufacture
 19 and distribution of prescription opioids and their corresponding high profits for all Defendants.

20 519. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate
 21 wire facilities have been deliberately hidden and cannot be alleged without access to Defendants'
 22 books and records. However, Plaintiff has described the types of predicate acts of mail and/or
 23 wire fraud, including certain specific fraudulent statements and specific dates upon which,
 24 through the mail and wires, Defendants engaged in fraudulent activity in furtherance of the
 25 Schemes.

26 520. The members of the Enterprises have not undertaken the practices described
 27 herein in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. §

1 1962(d), the members of the Enterprises conspired to violate 18 U.S.C. § 1962(c), as described
 2 herein. Various other persons, firms, and corporations, including third-party entities and
 3 individuals not named as defendants in this Complaint, have participated as co-conspirators with
 4 Defendants and the members of the Enterprises in these offenses and have performed acts in
 5 furtherance of the conspiracy to increase or maintain revenue, increase market share, and/or
 6 minimize losses for the Defendants and their named and unnamed co-conspirators throughout the
 7 illegal scheme and common course of conduct.

8 521. The members of the Enterprises aided and abetted others in the violations of the
 9 above laws.

10 522. To achieve their common goals, the members of the Enterprises hid from Plaintiff
 11 and the public: (1) the fraudulent nature of the Marketing Defendants' marketing scheme; (2) the
 12 fraudulent nature of statements made by Defendants and on behalf of Defendants regarding the
 13 efficacy of and risk of addiction associated with prescription opioids; (3) the fraudulent nature of
 14 the Distributor Defendants' representations regarding their compliance with requirements to
 15 maintain effective controls against diversion and report suspicious orders of opioids; and (4) the
 16 true nature of the relationship between the members of the Enterprises.

17 523. Defendants and each member of the Enterprises, with knowledge and intent,
 18 agreed to the overall objectives of the Schemes and participated in the common course of
 19 conduct. Indeed, for the conspiracy to succeed, each of the members of the Enterprises and their
 20 co-conspirators had to agree to conceal their fraudulent scheme.

21 524. The members of the Enterprises knew, and intended that, Plaintiff and the public
 22 would rely on the material misrepresentations and omissions made by them and suffer damages
 23 as a result.

24 525. As described herein, the members of the Enterprises engaged in a pattern of
 25 related and continuous predicate acts for years. The predicate acts constituted a variety of
 26 unlawful activities, each conducted with the common purpose of obtaining significant monies
 27 and revenues from Plaintiff and the public based on their misrepresentations and omissions.

1 526. The predicate acts also had the same or similar results, participants, victims, and
2 methods of commission.

3 527. The predicate acts were related and not isolated events.

4 528. The true purposes of Defendants' Schemes were necessarily revealed to each
5 member of the Enterprises. Nevertheless, the members of the Enterprises continued to
6 disseminate misrepresentations regarding the nature of prescription opioids and the functioning
7 of the Schemes.

8 529. Defendants' fraudulent concealment was material to Plaintiff and the public. Had
9 the members of the Enterprises disclosed the true nature of prescription opioids and their
10 excessive distribution, Plaintiff would not have acted as it did or incurred the substantial costs in
11 responding to the crisis caused by Defendants' conduct.

12 530. The pattern of racketeering activity described above is currently ongoing and
13 open-ended, and threatens to continue indefinitely unless this Court enjoins the racketeering
14 activity.

15 **D. Bainbridge Island Has Been Damaged by Defendants' RICO Violations**

16 531. By reason of, and as a result of the conduct of the Enterprises and, in particular,
17 their patterns of racketeering activity, Bainbridge Island has been injured in its business and/or
18 property in multiple ways, including but not limited to increased health care costs, increased
19 human services costs, costs related to dealing with opioid-related crimes and emergencies, and
20 other public safety costs, as fully described above. The City will continue incurring these
21 substantial costs well into the future. The Marketing Defendants' deceptive marketing scheme
22 changed the way physicians prescribe opioids, and together with their systemic undermining of
23 quotas and institutional controls as well as the failure to report suspicious orders by both the
24 Manufacturing and Distributor Defendants, Defendants achieved an enormous increase in the
25 number of opioids sold and distributed across the country and in Bainbridge Island.

26 532. Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and
27 proximately caused injuries and damages to Bainbridge Island, its community, and the public,

1 and the City is entitled to bring this action for three times its actual damages, as well as
2 injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff City of Bainbridge Island respectfully requests the Court order
5 the following relief:

- 6 A. An Order that the conduct alleged herein violates the Washington CPA;
- 7 B. An Order that Plaintiff is entitled to treble damages pursuant to the Washington
8 CPA;
- 9 C. An Order that the conduct alleged herein constitutes a public nuisance, including
10 under RCW 7.48 *et seq.* and under Washington law;
- 11 D. An Order that Defendants abate the public nuisance that they caused;
- 12 E. An Order that Defendants are liable for civil and statutory penalties to the fullest
13 extent permissible under Washington law for the public nuisance they caused;
- 14 F. An Order that Defendants are negligent under Washington law;
- 15 G. An Order that Defendants are grossly negligent under Washington law;
- 16 H. An Order that Defendants have been unjustly enriched at Plaintiff's expense
17 under Washington law;
- 18 I. An Order that Defendants' conduct constitutes violations of the Racketeer
19 Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961, *et seq.*;
- 20 J. An Order that Plaintiff is entitled to recover all measure of damages permissible
21 under the statutes identified herein and under common law;
- 22 K. An Order that Defendants are enjoined from the practices described herein;
- 23 L. An Order that judgment be entered against Defendants in favor of Plaintiff;
- 24 M. An Order that Plaintiff is entitled to attorneys' fees and costs pursuant to any
25 applicable provision of law, including but not limited to under the Washington CPA; and
- 26 N. An Order awarding any other and further relief deemed just and proper, including
27 pre-judgment and post-judgment interest on the above amounts.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims and of all issues so triable.

DATED this 8th day of October, 2019.

CITY OF BAINBRIDGE ISLAND

KELLER ROHRBACK L.L.P.

By /s/ Joseph Levan
Joseph Levan, WSBA #30136
City Attorney
280 Madison Avenue North
Bainbridge Island, WA 98110
Phone: (206) 780-8622
Fax: (206) 780-8600

By /s/ Lynn Lincoln Sarko
By /s/ Derek W. Loeser
By /s/ Gretchen Freeman Cappio
By /s/ David J. Ko
By /s/ Daniel P. Mensher
By /s/ Alison S. Gaffney
By /s/ Erika K. Emerson
Lynn Lincoln Sarko, WSBA #16569
Derek W. Loeser, WSBA #24274
Gretchen Freeman Cappio, WSBA #29576
David J. Ko, WSBA #38299
Daniel P. Mensher, WSBA #47719
Alison S. Gaffney, WSBA #45565
Erika K. Emerson, WSBA #45988
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Phone: (206) 623-1900
Fax: (206) 623-3384

Attorneys for Plaintiff